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Kansas Department of Agriculture
Kansas Division of Food Safety & Lodging
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KANSAS STATUTES ANNOTATED

Division of Food Safety & Lodging

Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES
Article 5.--DEPARTMENT OF AGRICULTURE

74-581. Transfer of powers, duties and functions to department and secretary of agriculture. (a) Except as otherwise provided by this order, the following powers, duties, and functions of the department of health and environment, the secretary of health and environment, the division of health of the department of health and environment, the director of the division of health, and the office of laboratory services of the department of health and environment are hereby transferred to and imposed upon the department of agriculture and the secretary of agriculture:

(1) All powers, duties, and functions under the food service and lodging act, K.S.A. 36-501 et seq., and amendments thereto, relating to the licensing, inspection, and regulation of mobile retail ice cream vendors, food service establishments in food processing plants, or any combination thereof, and food service establishments located in retail food stores;

(2) all powers, duties, and functions under the food service and lodging act, K.S.A. 36-501 et seq., and amendments thereto, relating to the licensing, inspection, and regulation of food vending machines, food vending machine companies, and food vending machine dealers as those terms are defined in K.S.A. 36-501, and amendments thereto;

(3) all powers, duties, and functions under K.S.A. 65-688 through K.S.A. 65-689, and amendments thereto, relating to the licensing, inspection, and regulation of retail food stores and food processing plants; and

(4) all of those powers, duties, and functions under K.S.A. 65-619 through K.S.A. 65-687, and amendments thereto, that relate to the powers, duties, and functions transferred under paragraphs (1), (2) and (3) above.

(b) The secretary of agriculture is hereby authorized to adopt rules and regulations as necessary to carry out the powers, duties and functions transferred to and imposed upon the department of agriculture and the secretary of agriculture pursuant to paragraph (a).

History: L. 2008, ch. 48, § 9, July 1.

74-582. Successors to certain powers and functions of department and secretary of health and environment and director of division of health; application of documentary references; rules and regulations; orders and directives continued in effect until superseded. (a) The department of agriculture and the secretary of agriculture shall be the successor in every way to the powers, duties, and functions of the department and secretary of health and environment, the division of health of the department of health and environment, the director of the division of health, and the office of laboratory services of the department of health and environment in which the same were vested prior to the effective date of this order and that are transferred pursuant to K.S.A. 2004 Supp. 74-581. Every act performed in the exercise of such transferred powers, duties, and functions by or under the authority of the department of secretary of agriculture shall be deemed to have the same force and effect as if performed by the department or secretary of health and environment, the division of health, the director of the division of health, or the office of laboratory services in which such powers, duties, and functions were vested prior to the effective date of this order.

(b) Whenever the department of health and environment, the secretary of health and environment, the division of health, the director of the division of health, or the office of laboratory services or words of like effect, are referred to or designated by a statute, contract, or other document and such reference is in regard to any of the powers,

duties, or functions transferred to the department or secretary of agriculture pursuant to this order, such reference or designation shall be deemed to apply to the department of agriculture or the secretary of agriculture.

(c) All rules and regulations, orders, and directives of the secretary of health and environment which relate to the functions transferred by this order and which are in effect on the effective date of this order shall continue to be effective and shall be deemed to be rules and regulations, orders, and directives of the secretary of agriculture until revised, amended, revoked, or nullified pursuant to law.

History: Executive Reorganization Order No. 32, L. 2004, ch. 192, § 2; Oct. 1.

74-583. Transfer of fund balances and assumption of liability for compensation and salaries by department. (a) The balances of all funds or accounts thereof appropriated or reappropriated for the department of health and environment relating to the powers, duties, and functions transferred by this order are hereby transferred within the state treasury to the department of agriculture and shall be used only for the purpose for which the appropriation was originally made.

(b) Liability for all accrued compensation or salaries of officers and employees who are transferred to the department of agriculture under this order shall be assumed and paid by the department of agriculture.

History: Executive Reorganization Order No. 32, L. 2004, ch. 192, § 3; Oct. 1.

74-584. Resolution of conflicts regarding disposition of property, powers, duties, functions, appropriations, personnel and records. (a) When any conflict arises as to the disposition of any property, power, duty, or function or the unexpended balance of any appropriation as a result of any abolition or transfer made by or under the authority of this order, such conflict shall be resolved by the governor, whose decision shall be final.

(b) The department of agriculture shall succeed to all property, property rights, and records which were used for or pertain to the performance of powers, duties, and functions transferred to the department of agriculture. Any conflict as to the proper disposition of property, personnel, or records arising under this order shall be determined by the governor, whose decision shall be final.

History: Executive Reorganization Order No. 32, L. 2004, ch. 192, § 4; Oct. 1.

74-585. Rights preserved in legal actions and proceedings. (a) No suit, action, or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against any state agency or program mentioned in this order, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of this order. The court may allow any such suit, action, or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

(b) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this order.

History: Executive Reorganization Order No. 32, L. 2004, ch. 192, § 5; Oct. 1.

74-586. Transfer of officers and employees; rights and benefits preserved. (a) All officers and employees of the department of health and environment who, immediately prior to the effective date of this order, are engaged in the exercise and performance of the powers, duties, and functions transferred by this order, as well as all officers and employees of the department of health and environment who are determined by the secretary of health and environment and the secretary of agriculture to be engaged in providing administrative, technical, or other support services that are essential to the exercise and performance of the powers, duties, and functions transferred by this order, are hereby transferred to the department of agriculture. All classified employees so transferred shall retain their status as classified employees.

(b) Officers and employees of the department of health and environment transferred by this order shall retain all retirement benefits and leave balances and rights which had accrued or vested prior to the date of transfer. The service of each such officer and employee so transferred shall be deemed to have been continuous. Any subsequent transfers, layoffs, or abolition of classified service positions under the Kansas civil service act shall be made in accordance with the civil service laws and any rules and regulations adopted thereunder. Nothing in this order shall affect the classified status of any transferred person employed by the department of health and environment prior to the date of transfer.

History: Executive Reorganization Order No. 32, L. 2004, ch. 192, § 6; Oct. 1.

74-587. Food safety programs; authority relating to certain real property transferred to department. On and after October 1, 2004, the Kansas department of agriculture shall succeed to whatever right, title or interest the department of health and environment has acquired in any real property in this state concerning the functions transferred by this act or by 2004 Executive Reorganization Order No. 32, and the authority shall hold the same for and in the name of the state of Kansas. On and after October 1, 2004, whenever any statute, contract, deed or other document concerns the power or authority of the department of health and environment or the secretary of the department of health and environment concerning the functions transferred by this act or by 2004 Executive Reorganization Order No. 32 to acquire, hold or dispose of real property or any interest therein, the Kansas department of agriculture shall succeed to such power or authority.

History: L. 2004, ch. 147, § 1; July 1.

74-588. Same; transfer of employees. Except as otherwise provided in this act, on October 1, 2004, officers and employees who, immediately prior to such date, were engaged in the performance of powers, duties or functions of the department of health and environment concerning food and food service which are transferred by this act or by 2004 Executive Reorganization Order No. 32, or who become a part of the Kansas department of agriculture, or the powers, duties and functions of which are transferred to the Kansas department of agriculture, and who, in the opinion of the secretary of the Kansas department of agriculture, are necessary to perform the powers, duties and functions of the Kansas department of agriculture, shall be transferred to, and shall become officers and employees of the Kansas department of agriculture.

History: L. 2004, ch. 147, § 2; July 1.

74-589. Same; conflict resolution. On and after October 1, 2004, when any conflict arises as to the disposition of any power, function or duty or the unexpended balance of any appropriation as a result of any abolition, transfer, attachment or change made by or under authority of this act, such conflict shall be resolved by the governor, whose decision shall be final.

History: L. 2004, ch. 147, § 3; July 1.

74-590. Same; disposition of records. (a) On and after October 1, 2004, the Kansas department of agriculture shall serve as custodian for all agency records as defined by the Kansas open records act, related to those sections of chapter 36, article 5 and chapter 65, article 6, from which authority is transferred from the secretary of health and environment to the secretary of agriculture. The department of health and environment shall continue to serve as custodian as defined by the Kansas open records act for all agency records related to chapter 36, article 5 and chapter 65, article 6 generated prior to October 1, 2004. A request for records generated prior to October 1, 2004, pursuant to the Kansas open records act may be made to the Kansas department of agriculture and it will be forwarded to the department of health and environment upon receipt.

(b) The department of health and environment will immediately make available to the Kansas department of agriculture upon request any records, memoranda, writings, entries, prints, representations or combinations thereof of any act, transaction, occurrence or event of the department of health and environment related to those functions transferred to the secretary of agriculture.

History: L. 2004, ch. 147, § 4; July 1.

74-591. Same; transfer of funds; creation of food safety fee fund. (a) The balances of all funds or accounts thereof appropriated or reappropriated for the department of health and environment relating to the powers, duties and functions transferred by this act are hereby transferred within the state treasury to the Kansas department of agriculture and shall be used only for the purpose for which the appropriation was originally made. On and after October 1, 2004, all such balances shall be deposited in the food safety fee fund and may be used to carry out the responsibilities and duties of the division of food safety of the Kansas department of agriculture, as established by this act.

(b) There is hereby created the food safety fee fund. The Kansas department of agriculture shall remit all moneys received by or for it from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the food safety fee fund. All expenditures from the food safety fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of agriculture or by a person or persons designated by the secretary.

History: L. 2004, ch. 147, § 5; July 1.

74-592. Same; communication between departments; consistent administration of regulation of food service establishments. The secretary of agriculture and the secretary of health and environment shall provide for a mechanism for ongoing communication and access between the division of food safety, as established by K.S.A. 2007 Supp. 74-593, and amendments thereto, and the division of health at the department of health and environment. The department of health and environment shall be the lead agency for public health matters when human illness or disease occurs. The division of food safety and the division of health shall cooperate in the investigation of a food borne illness. Such cooperation includes regular and special inspections of establishments, timely notification of potential outbreaks, interview of facility personnel, food and ingredient sample collection and processing, records sharing, training and dissemination of information.

History: L. 2008, ch. 84, § 18, Oct 1.

74-593. Same; creation of division of food safety; organization. (a) There is hereby established within and as a part of the Kansas department of agriculture, the division of food safety. The secretary of agriculture shall appoint a director of such division and such director shall be in the classified service of the Kansas civil service act.

(b) The secretary of agriculture may organize the division of food safety in the manner the secretary deems most efficient, so long as the same is not in conflict with the provisions of this act or with the provisions of law, and the secretary may establish policies governing the transaction of business of the division of food safety within the department.

History: L. 2004, ch. 147, § 8; July 1.

74-594. Same; transferred programs baseline; report to legislature. (a) The Kansas department of agriculture shall create a statistically based random selection of not less than 1,000 retail food stores which shall be inspected, documented and evaluated as a transferred programs baseline. The department shall include the results of the baseline inspections in the report required on January 31, 2006, in K.S.A. 2004 Supp. 74-595, and amendments thereto.

(b) On February 1, 2005, the Kansas department of agriculture shall report to the legislature the status of the baseline inspection program using 359 randomly selected retail food stores from subsection (a).

History: L. 2004, ch. 147, § 10; July 1.

74-595. Same; contents of report. Not later than January 31, 2005, and January 31, 2006, the Kansas department of agriculture shall report to the house and senate committees on agriculture on the status of the transition. Such report shall be prepared in cooperation with the department of health and environment. The report shall include the steps taken to ensure that food safety resources are targeted at identifying, preventing and eliminating those concerns that constitute the greatest risk to public health and food safety. The report shall also include a description of what steps have been taken to engage stakeholders in the transition and in deciding what actions would tend to improve food safety.

History: L. 2004, ch. 147, § 11; July 1.

74-596. Same; violations; penalties; misbranded or adulterated food; curative action. (a) Any person or entity who shall violate any of the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, or the rules and regulations adopted thereunder, may incur a civil penalty in an amount not more than $1,000 per violation, and in the case of a continuing violation every day such violation continues may be deemed a separate violation. Such civil penalty may be assessed in addition to any other penalty provided by law. The secretary of agriculture may assess the civil penalty after notice and opportunity for a hearing are given in accordance with the Kansas administrative procedure act. Any civil penalty assessed pursuant to this subsection is subject to review in accordance with the Kansas judicial review act.

(b) Any person or entity who shall violate any of the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, or the rules and regulations adopted thereunder, in an intentional or reckless manner shall be guilty of a class A, nonperson misdemeanor.

(c) Any food misbranded or adulterated or containing or suspected of containing any substance or substances injurious to public health or which is offered or exposed for sale in violation of any of the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, or the rules and regulations adopted thereunder, shall be subject to seizure in place until such time that the final disposition of the food has been determined by sampling and analysis. Within 30 days of seizure in place, upon verification that the suspected food was misbranded, adulterated or contains a substance or substances that may be injurious to public health the secretary of agriculture shall issue an order establishing measures to prevent further contamination or the threat to public health. The opportunity for hearing pursuant to the Kansas administrative procedure act shall be provided upon issuance of the order. The secretary of agriculture may order the destruction of contaminated food if no alternative assures that further contamination of health hazards are averted, and may be imposed in addition to any other penalty established by law. The district courts of the state of Kansas shall have jurisdiction to restrain violations of the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, and the rules and regulations adopted thereunder, by injunction.

History: L. 2004, ch. 147, § 12; L. 2008, ch. 48, § 10; July 1; amended 2010.

74-596a. If the secretary of agriculture determines after notice and opportunity for a hearing that any person has engaged in or is engaging in any act or practice constituting a violation of any of the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2008 Supp. 74-581, and amendments thereto, or any rules and regulations or orders issued thereunder, the secretary may require that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the secretary will carry out the purposes of the violated or potentially violated provision or rules and regulations or orders issued thereunder. Any such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act.

History: L. 2009, Ch. 59 § 3, July 1.

74-597. Same; contracts for county enforcement; inspections; access to premises; search warrants. The secretary of agriculture is hereby authorized and empowered to contract with the governing body of any county for the enforcement of all or any portion of the powers, duties and functions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2007 Supp. 74-581, and amendments thereto, and the rules and regulations adopted thereunder. Any county entering into a contract with the secretary to enforce such statutes, rules and regulations shall act as an agent of the secretary in carrying out such duties. Any inspection of any premises by officers, employees or agents of any such county, and any notice of noncompliance issued as a result of any such inspection, shall have the same force and effect as if such had been done by the secretary. For the purposes of carrying out the provisions transferred to and imposed upon the department of

agriculture and secretary of agriculture pursuant to K.S.A. 2007 Supp. 74-581, and amendments thereto, and the rules and regulations adopted thereunder, the secretary of agriculture or the secretary's agent or the county or district attorney or their agents may enter any premises at any reasonable time, in order:

(a) To have access for the purpose of inspecting any premises, products or equipment subject to the provisions of K.S.A. 2007 Supp. 74-581, and amendments thereto, and the rules and regulations adopted thereunder; or

(b) to inspect or sample food actually or reported to be adulterated or a threat to public health; or

(c) to inspect or investigate complaints of violations of the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2007 Supp. 74-581, and amendments thereto, and the rules and regulations adopted thereunder; or

(d) to sample products.

Should the secretary of agriculture, the secretary's agent or the county or district attorney or their agents be denied access to any premises where such access was sought for the purposes authorized, the secretary of agriculture or the county or district attorney may apply to any court of competent jurisdiction for a search warrant authorizing access to such premises for such purposes. The court may upon such application, issue the search warrant for the purposes requested. The enforcement of the criminal provisions of this act shall be the duty of, and shall be implemented by, the county or district attorneys of the various counties or districts. In the event a county or district attorney refuses to act, the attorney general shall so act. The secretary of agriculture is charged with the duty of enforcing all other provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2007 Supp. 74-581, and amendments thereto, and the rules and regulations adopted thereunder.

History: L. 2008, ch. 48, § 11, July 1.

74-598. Same; licenses; denial, suspension or revocation; grounds; hearing; appeal. (a) The secretary of agriculture may deny, suspend, revoke, refuse to renew or modify the provisions of any license issued under the powers, duties and functions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, and the rules and regulations adopted thereunder, if the secretary finds, that the applicant or licensee has:

(1) Been convicted of or pleaded guilty to a violation of any provision or requirement transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, or any rule and regulation adopted thereunder;

(2) failed to comply with any provision or requirement transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, or any rule and regulation adopted thereunder;

(3) interfered with or prevented the secretary or any authorized representative of the secretary from the performance of that person's job duties regarding any inspection or the administration of the provisions this act transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, or any rule and regulation adopted thereunder; or

(4) denied the secretary or any authorized representative of the secretary access to any premises required to be inspected under the provisions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2009 Supp. 74-581, and amendments thereto, or any rule and regulation adopted thereunder.

(b) The secretary shall inform the applicant or licensee of the opportunity for a hearing pursuant to the Kansas administrative procedure act before any license shall be denied, suspended, modified, revoked or denied renewal.

(c) The licensee or applicant may appeal from the decision and order, in accordance with provisions of the Kansas judicial review act.

History: L. 2008, ch. 48, § 12, July 1; L. 2009, Ch. 59 § 8, July 1; amended 2010.

74-599. Same; designation of hearing officer. Notwithstanding the provisions of K.S.A. 77-514, and amendments thereto, on and after July 1, 2004, with respect to hearings pursuant to K.S.A. 65-6a18 et seq., and amendments thereto, before the secretary of agriculture in accordance with the Kansas administrative procedure act, a hearing officer from the office of administrative hearings shall be the presiding officer unless the party requests that the matter, for which a hearing has been scheduled or for which a right to a hearing exists, be heard by a hearing officer appointed by the secretary.

History: L. 2004, ch. 147, § 16; July 1.

74-5,101. Certain licenses; renewal; fees; rules and regulations. (a) Except as otherwise provided in this section, any license issued under the provisions of K.S.A. 65-689, and amendments thereto, and section 3, and amendments thereto, shall expire on December 31 of the year in which it is issued, and may be renewed by making application to the secretary of agriculture on or before the expiration date. Application for renewal of a license shall be made on a form prescribed by the secretary of agriculture and shall be accompanied by the license fee required for the issuance of an original license. If, for any reason, a licensee fails to renew a license prior to the expiration date thereof, the licensee may obtain a renewal of such license within 30 days following the expiration date thereof, by complying with the foregoing provisions of this section and paying a restoration fee in the amount of $10.

(b) The secretary of agriculture is hereby authorized to adopt rules and regulations to establish an inspection frequency taking into account the relative risk posed by such establishments to public health and food safety.

History: L. 2008, ch. 48, § 2; July 1.

74-5,102. Single, combined license; rules and regulations. (a) The secretary of agriculture is hereby authorized to adopt rules and regulations as necessary to issue a single, combined license in order to efficiently carry out the powers, duties and functions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2007 Supp. 74-581, and amendments thereto.

(b) The secretary is hereby authorized to require a licensee, or a person required to be licensed, to provide such information and documentation as necessary to determine the amount of the license fee.

(c) A food service establishment as defined in K.S.A. 36-501, and amendments thereto, that is licensed pursuant to this section shall not be required to obtain a separate license pursuant to K.S.A. 36-503, and amendments thereto.

History: L. 2008, ch. 48, § 3; July 1.

74-5,103. Rules and regulations, orders and directives continued. All rules and regulations, orders and directives of the secretary of agriculture which relate to the powers, duties and functions transferred to and imposed upon the department of agriculture and secretary of agriculture pursuant to K.S.A. 2007 Supp. 74-581, and amendments thereto, and the rules and regulations adopted thereunder, which are in effect on the effective date of this act shall continue to be effective until revised, amended, revoked or nullified pursuant to law.

History: L. 2008, ch. 48, § 4; July 1.

TRANSFER OF FOOD SERVICE AND LODGING ACT

74-5,104. Transfer of powers, duties and functions to secretary of agriculture; division of food safety. (a) Except as otherwise provided by this act, on and after October 1, 2008, all of the powers, duties and functions of the department of health and environment concerning food service and lodging are hereby transferred to and conferred and imposed upon, the secretary of agriculture.

(b) Except as otherwise provided by this act, on and after October 1, 2008, the secretary of agriculture shall be the successor in every way to the powers, duties and functions of the department of health and environment concerning food service and lodging in which the same were vested prior to October 1, 2008. Every act performed in the exercise of such powers, duties and functions by or under the authority of the secretary of agriculture shall be deemed to have the same force and effect as if performed by the department of health and environment, in which such powers, duties and functions were vested prior to October 1, 2008.

(c) All rules and regulations of the department of health and environment concerning food service and lodging in existence on October 1, 2008, shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the secretary of agriculture until revised, amended, revoked or nullified pursuant to law.

(d) All orders and directives of the department of health and environment concerning food service and lodging in existence on October 1, 2008, shall continue to be effective and shall be deemed to be orders and directives of the secretary of agriculture until revised, amended or nullified pursuant to law.

(e) The division of food safety shall be a continuation of the department of health and environment concerning food service and lodging.

History: L. 2008, ch. 84, § 1; Apr. 24.

74-5,105. Rights preserved in legal actions and proceedings. (a) No suit, action or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against any state agency or program mentioned in this act, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of this act. The court may allow any such suit, action or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

(b) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this act.

History: L. 2008, ch. 84, § 2; Apr. 24.

74-5,106. Food service and lodging; authority relating to certain real property transferred to secretary. On and after October 1, 2008, the secretary of agriculture shall succeed to whatever right, title or interest the department of health and environment has acquired in any real property in this state concerning the functions transferred by this act, and the secretary of agriculture shall hold the same for and in the name of the state of Kansas. On and after October 1, 2008, whenever any statute, contract, deed or other document concerns the power or authority of the department of health and environment or the secretary of the department of health and environment concerning the functions transferred by this act to acquire, hold or dispose of real property or any interest therein, the secretary of agriculture shall succeed to such power or authority.

History: L. 2008, ch. 84, § 3; Apr. 24.

74-5,107. Same, transfer of employees. (a) Except as otherwise provided in this act, on October 1, 2008, officers and employees who, immediately prior to such date, were engaged in the performance of powers, duties or functions of the department of health and environment concerning food service and lodging which are transferred by this act, or who become a part of the Kansas department of agriculture, or the powers, duties and functions of which are

transferred to the Kansas department of agriculture, and who, in the opinion of the secretary of agriculture, are necessary to perform the powers, duties and functions of the Kansas department of agriculture, shall be transferred to, and shall become officers and employees of the Kansas department of agriculture.

(b) Officers and employees of the department of health and environment transferred by this act shall retain all retirement benefits and leave balances and rights which had accrued or vested prior to the date of transfer. The service of each such officer and employee so transferred shall be deemed to have been continuous. All transfers, layoffs or abolition of classified service positions under the Kansas civil service act shall be made in accordance with the civil service laws and any rules and regulations adopted thereunder. Nothing in this act shall affect the classified status of any transferred person employed by the department of health and environment prior to the date of transfer.

History: L. 2008, ch. 84, § 4; Apr. 24.

74-5,108. Same; disposition of records. (a) On and after October 1, 2008, the Kansas department of agriculture shall serve as custodian for all agency records, as defined by the Kansas open records act, related to article 5 of chapter 36 of the Kansas Statutes Annotated, from which authority is transferred from the department of health and environment to the secretary of agriculture. The department of health and environment shall continue to serve as custodian, as defined by the Kansas open records act, for all agency records related to article 5 of chapter 36 of the Kansas Statutes Annotated generated prior to October 1, 2008. A request for records generated prior to October 1, 2008, pursuant to the Kansas open records act, may be made to the Kansas department of agriculture and it shall be forwarded to the department of health and environment upon receipt.

(b) The department of health and environment shall immediately make available to the Kansas department of agriculture upon request any records, memoranda, writings, entries, prints, representations or combinations thereof of any act, transaction, occurrence or event of the department of health and environment related to those functions transferred to the secretary of agriculture.

History: L. 2008, ch. 84, § 5; Apr. 24.

74-5,109. Same; transfer of funds. On October 1, 2008, the balances of all funds or accounts thereof appropriated or reappropriated for the department of health and environment relating to the powers, duties and functions transferred by this act are hereby transferred within the state treasury to the Kansas department of agriculture and shall be used only for the purpose for which the appropriation was originally made.

History: L. 2008, ch. 84, § 6; Apr. 24.

74-5,110. Same; effective date. The provisions of sections 1 through 6, and amendments thereto, shall be effective on and after October 1, 2008.

History: L. 2008, ch. 84, § 7; Apr. 24.

74-5,111. Same; expenditures by secretary of health and environment; approval of secretary of agriculture required. (a) On and after the effective date of this act, and prior to July 1, 2008, the secretary of health and environment shall not make any expenditures for the fiscal year ending June 30, 2008, from funds or accounts appropriated or reappropriated for the department of health and environment relating to the powers, duties and functions transferred by this act on October 1, 2008, without prior approval of the secretary of agriculture.

(b) On and after July 1, 2008, and prior to October 1, 2008, the secretary of health and environment shall not make any expenditures for the fiscal year ending June 30, 2009, from funds or accounts appropriated or reappropriated for the department of health and environment relating to the powers, duties and functions transferred by this act on October 1, 2008, without prior approval of the secretary of agriculture.

History: L. 2008, ch. 84, § 8; Apr. 24.

FOOD, DRUG AND COSMETICS ACT

65-619. Chemicals in meat products; penalty. The use of sulphites, any preparation containing sulphur dioxide, or any secret preparation the ingredients of which are unknown, in the manufacture or preparation of meat products, and the manufacture, selling, keeping or offering for sale of any meat products containing sulphites, sulphur dioxide, or the ingredients of any secret preparation, is hereby prohibited, and said meat products are hereby declared to be adulterated within the meaning of the provisions of K.S.A. 65-664, and any amendments thereto, and the manufacture, sale, keeping or offering for sale of any such meat product shall subject the offender to the penalties prescribed in K.S.A. 65-659, and any amendments thereto, relating to adulterated foods.

History: L. 1908, ch. 64, § 1; R.S. 1923, 65-619; L. 1957, ch. 340, § 1; June 29.

65-620. Diseased animals; sale. Any person or persons who shall kill, sell or trade or exchange, or offer to sell, trade or exchange, for human consumption, any diseased animal or animals, knowing them to be diseased, shall be guilty of a misdemeanor: Provided, That this act shall not apply to animals sold for immediate slaughter under state or federal inspection.

History: L. 1909, ch. 185, § 1; March 26; R.S. 1923, 65-620.

65-621. Same; purchase. Any person or persons who shall purchase or get by trade or exchange or in any other way come in possession of any diseased animal or animals, knowing the same to be diseased, for the purpose and with the intent of disposing the same for food, except for immediate slaughter under state or federal inspection, shall be guilty of a misdemeanor.

History: L. 1909, ch. 185, § 2; March 26; R.S. 1923, 65-621.

65-622. Same; penalty. Every person found guilty of violating any of the provisions of this act shall be fined in any sum not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment.

History: L. 1909, ch. 185, § 3; March 26; R.S. 1923, 65-622.

65-623. Sale of certain cold-storage meats unlawful; penalty. Every person who shall offer or expose for sale at retail, for human food, at any public market, store, shop, or house, or in or about any street or other public place, any slaughtered domestic or wild fowls, rabbits, squirrels, or other small animals, wild or tame, that have been preserved by refrigeration or cold storage, unless the entrails, crops and other offensive parts are properly drawn and removed, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not less than fifty dollars nor more than one hundred dollars for each offense.

History: L. 1907, ch. 187, § 1; Feb. 9; R.S. 1923, 65-623.

65-624. Protection of meat; penalty for violation. Every dealer in slaughtered fresh meats, fish, fowl or game for human food, at wholesale or retail, at any established place, or as a peddler in the transportation of such food from place to place to customers, shall protect the same from dust, flies and other vermin or substance which may injuriously affect it, by securely covering it while being so transported. Every violation of this provision shall be a misdemeanor punishable by a fine of not less than ten dollars, or by imprisonment in the county jail for not less than ten days.

History: L. 1907, ch. 187, § 2; Feb. 9; R.S. 1923, 65-624.

65-625. Conditions of places of sale of food and drugs. Every place occupied or used for the preparation for sale, manufacture, packing, storage, sale or distribution of any food or drug shall be properly lighted, drained, plumbed, ventilated, screened and conducted with strict regard to the influence of such condition upon the health of operatives, employees, clerks or other persons therein employed, and the purity and wholesomeness of the foods or drugs therein produced.

History: L. 1909, ch. 230, § 1; March 24; R.S. 1923, 65-625.

65-626. Rules and regulations; penalty for violations. The secretary of agriculture is hereby authorized and directed to make such sanitary rules and regulations as are necessary in food and drug inspection and to carry out the provisions of this act; and any person or persons or associations violating the provisions of this act, or any rules and regulations adopted under the provisions of this act, shall upon conviction be fined in a sum not exceeding $100.

History: L. 1909, ch. 230, § 2; R.S. 1923, 65-626; L. 1965, ch. 506, § 26; L. 1974, ch. 352, § 95; July 1; amended 2010.

65-631. Adulteration of turpentine or certain oils. Hereafter it shall be unlawful to manufacture, mix for sale, sell, offer or expose for sale in this state, under the name of raw linseed oil or flaxseed oil, any substance which is not wholly the product obtained from well-cleaned flaxseed or linseed, and unless the same fulfills the latest requirements of the United States pharmacopoeia, or any so-called boiled linseed oil, or boiled flaxseed oil, unless the same shall have been prepared by incorporating drier with raw linseed oil, as defined above, at a temperature of not less than 225 degrees Fahrenheit, and unless the same contains not less than 96 percent of linseed oil. And for the purpose of this act it shall also be deemed a violation thereof if boiled linseed oil does not conform to the following requirements:

(1) Its specific gravity at 60 degrees Fahrenheit must be not less than 0.935.

(2) Its saponification value (Koettstorfer figure) must not be less than 186.

(3) Its iodine number (Huebl's method) must not be less than 160.

(4) Its acid value must not exceed 10.

(5) The volatile matter expelled at 212 degrees Fahrenheit must not exceed one-half of one percent.

(6) No mineral oil shall be present, and the amount of unsaponifiable matter as determined by standard methods shall not exceed 2.5 percent.

(7) The film left after flowing the oil over glass and allowing it to drain in a vertical position must dry free from tackiness in not to exceed twenty hours, at a temperature of about 70 degrees Fahrenheit.

It shall be unlawful to manufacture, mix for sale, sell, offer for sale or expose for sale in this state under the name of turpentine or spirits of turpentine or any compound of the word turpentine or under any name or device illustrating or suggesting turpentine, oil of turpentine or spirits of turpentine, any article which is not wholly distilled from rosin, turpentine gum, or scrape from pine trees, and unmixed and unadulterated with oil, benzine or any other foreign substance of any kind whatsoever.

History: L. 1911, ch. 179, § 1; May 22; R.S. 1923, 65-631.

65-632. Same; branding. No person, firm or corporation shall sell, expose or offer for sale any turpentine, flaxseed oil or linseed oil, unless it is done under its true name, and each barrel, keg or can of such oil so sold, exposed or offered for sale, has distinctly and durably painted, stamped, stenciled, labeled or marked thereon the true name of such oil in ordinary bold-face capital letters, not less than five lines pica in size, and the name and address of the manufacturer thereof, or that of the jobber or dealer therein: Provided, That if the contents of the package be less than twenty-five gallons, a label may be used printed in type not less than two-line pica in size.

History: L. 1911, ch. 179, § 2; May 22; R.S. 1923, 65-632.

65-633. Same; penalty for misbranding. Any person, firm or corporation who shall fail to comply with the requirements of K.S.A. 65-632, or falsely paint, stencil, label or mark, as required by K.S.A. 65-632, said barrels, kegs or cans containing turpentine, flaxseed oil or linseed oil or knowingly permit such false painting, stamping, labeling or marking, or violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction punished with a fine of not less than ten dollars nor more than one hundred dollars or imprisonment not less than ten days nor more than ninety days or both for each offense.

History: L. 1911, ch. 179, § 3; May 22; R.S. 1923, 65-633.

65-634. Same; spirits of turpentine or linseed oil compounds. Nothing in this act shall be construed as prohibiting the manufacture or sale of adulterated spirits of turpentine or linseed oil compounds: Provided, If such compounds or adulterations are designed to take the place of raw or boiled linseed oil or turpentine as defined in K.S.A. 65-631, they shall not be manufactured or mixed for sale, sold, offered or exposed for sale under any title or designation conveying the impression, either directly or indirectly, that it is flaxseed oil or linseed oil, and all compounds of linseed oil or flaxseed oil shall, when sold, offered or exposed for sale, under invented proprietary names or titles, bear conspicuously upon the containing vessel in capital letters, not less than five-line pica in size, and the word "compound," or "adulterated," and be labeled so as to state clearly and distinctly the actual proportions of turpentine or linseed oil and other ingredients contained therein, said label to be printed in the English language, in plain legible type in continuous list, with no intervening matter of any kind.

History: L. 1911, ch. 179, § 4; May 22; R.S. 1923, 65-634.

65-635. Same; powers and duties of inspectors. The secretary of agriculture, as well as inspectors, assistants, experts, analysts, or others appointed by the secretary, shall have full rights of ingress and egress to the premises occupied by parties who manufacture, deal in or compound turpentine, linseed oil or flaxseed oil, and also shall have power and authority to open any tank, barrel, can or other vessel believed to contain such oil, turpentine, or products used in its manufacture, and to inspect the contents thereof, and to take therefrom samples for analysis, and in case any of the samples so taken shall prove on analysis to be adulterated in violation of the provisions of this act, it shall be the duty of the person securing the sample to proceed against the offender as herein provided.

History: L. 1911, ch. 179, § 5; May 22; R.S. 1923, 65-635; amended 2010.

65-636. Exhibition of title "drugstore," "pharmacy" or "apothecary." It shall be unlawful for any person, who is not legally licensed as a pharmacist by the state board of pharmacy, or any person, firm or corporation who does not have in continuous employ, at each place of business, a pharmacist licensed by the state board of pharmacy, to take, use or exhibit the title "drugstore," "pharmacy" or "apothecary" or any combination of such titles, or any title or description of like import, or any other term designed to take the place of such title.

History: L. 1925, ch. 205, § 1; L. 1986, ch. 231, § 8; June 1.

65-637. Same; penalty. Any person, firm or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars ($25) nor more than fifty dollars ($50) for the first offense and not less than fifty dollars ($50) nor more than one hundred dollars ($100) for each succeeding offense.

History: L. 1925, ch. 205, § 2; May 28.

65-638. Oleomargarine and margarine; definition. For the purposes of this act, certain manufactured substances, certain extracts and certain mixtures and compounds, including such mixtures and compounds with butter, shall be known and designated as "oleomargarine," or "margarine" namely: All substances heretofore known as oleomargarine, margarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all mixtures and compounds of oleomargarine, or margarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef fat, suet, lard, lard oil, fish oil, fish fat, vegetable oil, annotto, and other coloring matter, intestinal fat, and offal fat if

(1) made in imitation or semblance of butter, or

(2) calculated or intended to be sold as butter or for butter, or

(3) churned, emulsified, or mixed in cream, milk, water, or other liquid, and containing moisture in excess of one percent (1%) and intended to be used for human food.

This section shall not apply to puff pastry shortening not churned or emulsified in milk or cream, and having a melting point of one hundred eighteen (118) degrees Fahrenheit or more, nor to any of the following containing condiments or spices: Salad dressing, mayonnaise dressing, or mayonnaise products.

History: L. 1929, ch. 219, § 1; L. 1968, ch. 284, § 1; July 1.

65-639. Same; labeling. It shall be unlawful to sell or offer for sale in the state of Kansas any of the substances herein designated as "oleomargarine" or "margarine" unless such substances are plainly labeled as "oleomargarine" or "margarine."

History: L. 1929, ch. 219, § 2; L. 1968, ch. 284, § 2; July 1.

65-640. Same; serving at public places; notice; identification. It shall be unlawful for any person to possess in a form ready for serving oleomargarine or margarine at a public eating place unless a notice that oleomargarine or margarine is served is displayed prominently and conspicuously in such place and in such manner as to render it likely to be read and understood by the ordinary individual being served in such eating place and is printed in English upon each bill of fare or menu, if one be used, and in letters not smaller than eight (8) point bold-faced gothic capitals or not smaller than that normally used to designate the serving of other food items, the words "oleomargarine served here" or "margarine served here"; and in case no bill of fare or menu be used the manager or person in charge of such establishment shall cause to be posted upon each of two of the walls of the dining or eating room in a conspicuous position and in letters at least one and one-half (1 1/2) inches in height, a placard containing on the face thereof the words in the English language, "oleomargarine served here" or "margarine served here"; and such person shall keep said placard continuously posted as aforesaid so long as such substitute be kept or used.

No person shall serve oleomargarine or margarine at a public eating place, whether or not any charge is made therefor, unless (1) each separate serving bears or is accompanied by labeling identifying it as oleomargarine or margarine or (2) each separate serving thereof is triangular in shape.

History: L. 1929, ch. 219, § 3; L. 1955, ch. 287, § 1; L. 1968, ch. 284, § 3; July 1.

65-641. Same; enforcement of act. The secretary of agriculture, in connection with inspections of food service and lodging establishments, shall be charged with the enforcement of this act.

History: L. 1929, ch. 219, § 4; L. 1955, ch. 287, § 2; L. 1968, ch. 284, § 4; L. 1975, ch. 314, § 20; July 1; amended 2010.

65-642. Same; penalty. Any person, firm or corporation, and any officer, agent, servant or employee of such person, firm or corporation who violates any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than thirty (30) days; and upon subsequent offense be punished by a fine of not less than twenty-five dollars, or imprisonment in the county jail for not less than sixty (60) days.

History: L. 1929, ch. 219, § 5; July 1.

65-643. Caustic or corrosive substances; definition of terms. When used in this act, unless the context or subject matter otherwise requires, the following shall be held and construed to mean as follows:

A. The terms "dangerous caustic or corrosive substance" means each and all of the acids, alkalis, and substances named below: (a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of ten percentum or more; (b) sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H_2SO_4) in a concentration of ten percentum or more; (c) nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO_3) in a concentration of five percentum or more; (d) carbolic acid (C_6H_5CH), otherwise known as phenol, and any preparation containing carbolic acid in a concentration of five percentum or more; (e) oxalic acid and any preparation containing free or chemically unneutralized oxalic acid ($H_2C_2O_4$) in a concentration of ten percentum or more; (f) any salt of oxalic acid and any preparation containing any such salt in a concentration of ten percentum or more; (g) acetic acid or any preparation containing free or chemically unneutralized acetic acid ($HC_2H_3O_2$) in a concentration of twenty percentum or more; (h) hypochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield ten percentum or more by weight of available chlorine, excluding calx chlorinata, bleaching powder, and chloride of lime; (i) potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of ten percentum or more; (j) sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of ten percentum or more; (k) silver nitrate sometimes known as lunar caustic, and any preparation containing silver nitrate ($AgNO_3$) in a concentration of five percentum or more; and (l) ammonia water and any preparation yielding free or chemically uncombined ammonia (NH_3), including ammonium hydroxide and "Hartshorn" in a concentration of five percentum or more.

B. The term "misbranded parcel, package or container" means a retail parcel, package or container or any dangerous caustic or corrosive substance for household use, not bearing a conspicuous easily legible label or sticker, containing (a) the name of the article; (b) the name and place of business of the manufacturer, packer, seller or distributor; (c) the word "poison" running parallel with the main body of reading matter on said label or sticker on a clear, plain background or a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than 24-point size, unless there is on said label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker, and (d) directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance.

C. The words "person" or "persons" shall be held, understood and construed to mean every person, natural or artificial, and all firms, copartnerships, trust estates, corporations and the principal officers and agents thereof.

History: L. 1927, ch. 247, § 1; June 1.

65-644. Same; misbranding. No person shall sell, barter or exchange, or receive, hold, display or offer for sale, barter or exchange, in the state of Kansas, any dangerous caustic or corrosive substance in a misbranded parcel, package or container, said parcel, package or container being designed for household use.

History: L. 1927, ch. 247, § 2; June 1.

65-645. Same; condemnation and disposition. Any dangerous caustic or corrosive substance in a misbranded parcel, package or container suitable for household use, that is being sold, bartered or exchanged, or held, displayed or offered for sale, barter or exchange, shall be liable to be proceeded against in any court of competent jurisdiction. If such substance is condemned as misbranded by said court, it shall be disposed of by destruction or sale, as the court may direct; and if sold, the proceeds, less the actual costs and charges, shall be paid over to the clerk of the district court of the county in which such sale is had, but such substance shall not be sold contrary to the laws of the state: Provided, however, That upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such substance will not be unlawfully sold or otherwise disposed of, the court may order [or] direct that such substance be delivered to the owner thereof. Such condemnation proceedings shall conform as near as may be to proceedings in confiscation of intoxicating liquors.

History: L. 1927, ch. 247, § 3; June 1.

65-646. Same; enforcement of act. The attorney general and the county attorneys of the respective counties of this state shall enforce the provisions of this act, and they are hereby authorized and empowered to approve and register such brands and labels intended for use under the provisions of this act as may be submitted to him for that purpose and as may, in his judgment, conform to the requirements of this statute.

History: L. 1927, ch. 247, § 4; June 1.

65-647. Same; penalty. Any person violating the provisions of this act shall, upon conviction thereof, be punished by a fine of not more than two hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment in the discretion of the court.

History: L. 1927, ch. 247, § 5; June 1.

65-648. Same; prosecutions. The attorney general and the county attorneys of the respective counties of the state to whom there is presented, or who in any way procures satisfactory evidence of any violation of the provisions of this act, shall cause appropriate proceedings to be commenced and prosecuted in the proper courts, without delay, for the enforcement of the penalties as in such cases herein provided.

History: L. 1927, ch. 247, § 6; June 1.

65-649. Same; sale of household products. Household products for cleaning and washing purposes subject to this act and labeled in accordance therewith may be sold, offered for sale, held for sale and distributed in this state by any dealer, wholesaler or retailer.

History: L. 1927, ch. 247, § 7; June 1.

65-650. Medicines, drugs and poisons sold through vending machines, requirements; penalties for violations. (a) Any person, firm or corporation who offers for sale, sells or distributes any prescription medicine, prescription-only drug, drug which contains ephedrine alkaloids, drug intended for human use by hypodermic injection or poison through or by means of any vending machine or other mechanical device, or who uses any vending machine in or for the sale or distribution of any prescription medicine, prescription-only drug, drug which contains ephedrine alkaloids, drug intended for human use by hypodermic injection or poison, shall be guilty of a class C nonperson misdemeanor and upon conviction shall be fined not less than $25 nor more than $500.

(b) No nonprescription drugs shall be offered for sale or sold through a vending machine in anything other than the manufacturer's original tamper-evident and expiration-dated packet. No more than 12 different nonprescription drugs products shall be offered for sale or sold through any one vending machine. Any vending machine in which nonprescription drugs are offered for sale or sold shall be located so that the drugs stored in such vending machine are stored in accordance with drug manufacturer's requirements. Drugs offered for sale or sold in such vending machine shall not be older than the manufacturer's expiration date. Each vending machine through which nonprescription drugs are offered for sale or sold shall have an obvious and legible statement on the machine that identifies the owner of the machine, a toll-free telephone number at which the consumer may contact the owner of the machine, a statement advising the consumer to check the expiration date of the product before using the product and the telephone number of the state board of pharmacy. As used in this subsection, "nonprescription drug" does not include any prescription medicine, prescription-only drug, drug which contains ephedrine alkaloids, drug intended for human use by hypodermic injection or poison. A violation of this subsection is a class C nonperson misdemeanor and upon conviction the violator shall be fined not less than $25 nor more than $500.

History: L. 1933, ch. 177, § 1; L. 2000, ch. 40, § 1; July 1.

65-651. Distinctive coloring of certain poisonous substances; purpose. It shall be unlawful for any person, firm or corporation to sell, expose for sale or offer for sale any sodium fluoride, sodium silico-fluoride, lead arsenate, calcium arsenate, or any other poisonous insecticide, fungicide or rodent poison unless said poison has been

distinctly colored in such a manner as to make it easily distinguished from food products such as flour, soda, baking powder, cream of tartar, etc.

History: L. 1945, ch. 255, § 1; June 28.

65-652. Same; enforcement; destruction or sale; disposition of proceeds of sale. Any poison such as described in K.S.A. 65-651 which is not distinctly colored as required by this act when offered or exposed for sale, or sold, or located upon the premises of any establishment handling foods, shall be liable to be proceeded against in any court of competent jurisdiction. If such poison is condemned by said court as not being distinctly colored, it shall be disposed of by destruction or sale, as the court may direct; and if sold, the same shall be distinctly colored in accordance with the provisions of this act, and the proceeds, less the actual cost and charges, shall be paid over to the clerk of the district court in the county in which such sale is had, and the clerk of such court shall pay the same to the county treasurer. Such condemnation proceedings shall conform as near as may be to proceedings in confiscation of intoxicating liquors.

History: L. 1945, ch. 255, § 2; L. 1973, ch. 106, § 17; June 1.

65-653. Same; enforcement of act. It shall be the duty of the secretary of agriculture through the food and drug inspectors of the department of agriculture to enforce the provisions of this act.

History: L. 1945, ch. 255, § 3; L. 1974, ch. 352, § 96; L. 1975, ch. 312, § 8; July 1; amended 2010.

65-654. Same; penalties. Any person, firm, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not more than three hundred dollars or imprisonment for a period of not more than sixty days, or both such fine and imprisonment at the discretion of the court.

History: L. 1945, ch. 255, § 4; June 28.

65-655. Food, drug and cosmetic act; title. K.S.A. 65-619 through 65-690, and amendments thereto may be cited as the Kansas food, drug and cosmetic act.

History: L. 1953, ch. 286, § 1; June 30; amended 2010.

65-656. Same; definitions. For the purpose of this act: (a) The term "secretary" means the secretary of agriculture.

(b) The term "person" includes individual, partnership, corporation, and association.

(c) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(d) The term "drug" means (1) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; and (2) articles intended for use in diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts or accessories. The term "drug" shall not include amygdalin (laetrile).

(e) The term "device," except when used in paragraph (k) of this section and in K.S.A. 65-657 (j), 65-665 (f), 65-669 (c) and (o), and 65-671 (c) means instruments, apparatus and contrivances, including their components, parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals.

(f) The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleaning, beautifying, promoting attractiveness, or altering the appearance; and (2) articles intended for use as a component of any such articles, except that such term shall not include soap.

(g) The term "official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them.

(h) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this act that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(i) The term "immediate container" does not include package liners.

(j) The term "labeling" means all labels and other written, printed or graphic matter (1) upon an article or any of its containers or wrappers, or (2) accompanying such article.

(k) If any article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combinations thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or materials with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(l) The term "advertisement" means all representations disseminated in any manner or by any means other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(m) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(n) The term "new drug" means (1) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions. The term "new drug" shall not include amygdalin (laetrile).

(o) The term "contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(p) The provisions of this act regarding the selling of food, drug, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packaging, exposure, offer, possession, and holding of any such articles for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment.

(q) The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" within the meaning of the agricultural chemicals act, K.S.A. 2-2202 as now enacted or as hereafter amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(r) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(s) The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include: (1) A pesticide chemical in or on a raw agricultural commodity; or (2) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or (3) a color additive; or (4) any substance used in accordance with a sanction or approval granted prior to the enactment of the food additive amendment of 1958, pursuant to the federal act.

(t) (1) The term "color additive" means a material which -- (A) is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source, or (B) when added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with another substance) of imparting color thereto; except that such term does not include any material which has been or hereafter is exempted under the federal act. (2) The term "color" includes black, white and intermediate grays. (3) Nothing in clause (1) (t) shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(u) The term "imitation" shall mean any article made in the semblance of another, consisting of similar or dissimilar ingredients and being capable of being substituted for the imitated article without the knowledge of the consumer.

(v) The term "federal act" means the federal food, drug and cosmetic act (title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).

History: L. 1953, ch. 286, § 2; L. 1965, ch. 377, § 1; L. 1967, ch. 338, § 1; L. 1974, ch. 352, § 97; L. 1978, ch. 239, § 13; July 1; amended 2010.

65-657. Same; unlawful acts. The following acts and the causing thereof within the state of Kansas are hereby prohibited:

(a) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, or cosmetic.

(c) The receipt in commerce of any food, drug, device, or cosmetic knowing it to be adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of K.S.A. 65-666.

(e) The dissemination of any false advertisement.

(f) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by K.S.A. 65-674.

(g) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the United States from whom he received in good faith the food, drug, device, or cosmetic.

(h) The removal or disposal of a detained or embargoed article in violation of K.S.A. 65-660.

(i) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded.

(j) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized, or required by regulations promulgated under the provisions of this act.

(k) The using of any person to such person's own advantage, or revealing, other than to the administrator or officers or employees of the department of agriculture or to the courts where relevant in any jurisdictional proceeding under this act, any information acquired under authority of this act concerning any method or process which constitutes a trade secret under the uniform trade secrets act (K.S.A. 60-3320 et seq. and amendments thereto) and as a trade secret is entitled to protection.

(l) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under K.S.A. 65-669a, as amended, or that such drug complies with the provisions of such section.

(m) In the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal act. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this act.

(n) (1) Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; or (2) selling, dispensing, disposing of or causing to be sold, dispensed or disposed of or concealing or keeping in possession, control or custody, with intent to sell, dispense or dispose of, any drug, device or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by subsection (1) hereof; or (3) making, selling, disposing of or causing to be made, sold or disposed of or keeping in possession, control or custody, or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce that trade name or other identifying mark or imprint of another or any likeness of any of the foregoing upon any drug, device or container thereof.

(o) Dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the express permission in each case of the person ordering or prescribing.

History: L. 1953, ch. 286, § 3; L. 1965, ch. 377, § 2; L. 1974, ch. 352, § 98; L. 2005, ch. 67, § 6; July 1; amended 2010.

65-658. Same; injunction to restrain violation of 65-657. In addition to the remedies hereinafter provided the secretary of agriculture is hereby authorized to apply to the district court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining, any person from violating any provision of K.S.A. 65-657, as amended; irrespective of whether or not there exists an adequate remedy at law.

History: L. 1953, ch. 286, § 4; L. 1974, ch. 352, § 99; July 1; amended 2010.

65-659. Same; penalties for violations of 65-657. (a) Any person who violates any of the provisions of K.S.A. 65-657, as amended, shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than sixty (60) days or a fine of not more than three hundred dollars ($300), or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than six (6) months, or a fine of not more than one thousand dollars ($1,000), or both such imprisonment and fine.

(b) No person shall be subject to the penalties of subsection (a) or (c) if he establishes a guaranty of undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this act, designating this act.

(c) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller or the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the secretary to furnish the secretary the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the United States, who caused him to disseminate such advertisement.

History: L. 1953, ch. 286, § 5; L. 1974, ch. 352, § 100; July 1.

65-660. Same; adulterated or misbranded food, drug, device or cosmetic; detaining or embargoing; condemnation proceedings; consolidation, when; samples and analyses of seized articles; destruction of

certain perishable food. (a) Whenever a duly authorized agent of the secretary finds or has probable cause to believe, that any food, drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this act, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(b) When an article detained or embargoed under subsection (a) has been found by such agent to be adulterated, or misbranded, he shall petition the district court in whose jurisdiction the article is detained or embargoed for a libel for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent: Provided, That when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the secretary. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the secretary that the article is no longer in violation of this act, and that the expenses of such supervision have been paid: Provided further, That no action shall be instituted under this act for any alleged misbranding if there is pending in any court, state or federal, a proceeding under this act based upon the same alleged misbranding, and not more than one such proceeding shall be instituted if no such proceeding is so pending, except that such limitations shall not apply (1) when such misbranding has been the basis of a prior judgment in favor of the state of Kansas or the United States, in a criminal, injunction, or condemnation proceeding under this act, or (2) when the administrator has probable cause to believe from facts found without hearing by him or any officer or employee of the agency that the misbranded article is dangerous to health, or that the labeling of the misbranded article is fraudulent, or would be in a material respect misleading to the injury or damage of the purchaser or consumer. In any case where the number of proceedings is limited as above provided, the proceeding pending or instituted shall, on application of the claimant seasonably made, be removed for trial to any district court agreed upon by stipulation between the parties, or in case of failure to so stipulate within a reasonable time, the claimant may apply to the court of the district in which the seizure has been made, and such court after giving the county attorney reasonable notice and opportunity to be heard shall by order, unless good cause to the contrary is shown, specify a district in which claimant's principal place of business is located, to which the case shall be removed for trial. Upon demand of either party any issue of fact joined in any such case shall be tried by jury: Provided further, When proceedings under this section involving the same claimant and the same issues of adulteration or misbranding are pending in two or more jurisdictions, such pending proceedings upon application of the claimant seasonably made to the court of one jurisdiction, shall be consolidated for trial by order of such court and tried in (1) any district selected by the claimant where one such proceeding is pending, or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time the claimant may apply to the court of one such jurisdiction and such court, after giving reasonable notice to the county attorney and opportunity to be heard, shall by order unless good cause to the contrary is shown, specify a district in which claimant's principal place of business is located, in which all such pending proceedings shall be consolidated for trial and tried. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the case covered thereby: Provided further, The court at any time after seizure up to a reasonable time before trial, shall by order allow any party to a condemnation proceeding, his attorney or agent to obtain a representative sample of the article seized and as regards fresh fruits or fresh vegetables, a true copy of the analyses on which the proceeding is based and the identifying marks or numbers, if any of the packages from which the samples analyzed were obtained.

(d) Whenever the secretary or any of his authorized agents shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the secretary, or his authorized agent, shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food.

History: L. 1953, ch. 286, § 6; L. 1974, ch. 352, § 101; July 1.

65-661. Same; proceedings instituted by county attorney. It shall be the duty of each county attorney to whom the secretary reports any violation of this act, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History: L. 1953, ch. 286, § 7; L. 1974, ch. 352, § 102; July 1.

65-662. Same; minor violations; notice or warning. Nothing in this act shall be construed as requiring the secretary to report for the institution of proceedings under this act, minor violations of this act, whenever the secretary believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

History: L. 1953, ch. 286, § 8; L. 1974, ch. 352, § 103; July 1.

65-663. Same; regulations prescribing definitions and standards of identity for food. Whenever in the judgment of the secretary such action will promote honesty and fair dealing in the interest of consumers, the secretary shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, and/or reasonable standard of quality and/or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the secretary shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the federal act.

History: L. 1953, ch. 286, § 9; L. 1974, ch. 352, § 104; July 1.

65-664. Same; food deemed adulterated, when. A food shall be deemed to be adulterated:

(a) (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of the substance in such food does not ordinarily render it injurious to health; or (2)(A) it bears or contains any added poisonous or added deleterious substance, other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive, which is unsafe within the meaning of K.S.A. 65-667; or (B) it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of K.S.A. 65-667; or (C) it is or it bears or contains any food additive which is unsafe within the meaning of K.S.A. 65-667. Where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under K.S.A. 65-667 and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of K.S.A. 65-667 and clause (C) of this subsection, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity; or (3) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or is otherwise unfit for food; or (4) it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or (5) it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or (6) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(b) (1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) any substance has been substituted wholly or in part therefor; or (3) damage or inferiority has been concealed in any manner; or (4) any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is. This subsection does not apply to any cured or smoked pork product by reason of its containing added water.

(c) If it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of 4/10 of 1%, harmless natural wax not in excess of 4/10 of 1%, harmless natural gum, and pectin. This subsection does not apply to any confectionery by reason of its containing less than 1/2 of 1% by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.

(d) If it is or bears or contains any color additive which is unsafe within the meaning of K.S.A. 65-667.

History: L. 1953, ch. 286, § 10; L. 1965, ch. 377, § 3; L. 1981, ch. 242, § 1; July 1.

65-665. Same; food deemed misbranded, when. A food shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If it is offered for sale under the name of another food.

(c) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word, imitation, and, immediately thereafter, the name of the food imitated.

(d) If its container is so made, formed, or filled as to be misleading.

(e) If in package form, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count. Reasonable variations shall be permitted, and exemptions as to small packages shall be established, by rules and regulations prescribed by the secretary of agriculture.

(f) If any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by K.S.A. 65-663, as amended, unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

(h) If it purports to be or is represented as (1) a food for which a standard of quality has been prescribed by regulations as provided in K.S.A. 65-663, as amended, and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or (2) a food for which a standard or standards of fill of container has been prescribed by regulations as provided by K.S.A. 65-663, as amended, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify a statement that it falls below such standard.

(i) If it is not subject to the provisions of paragraph (g) of this section, unless it bears labeling clearly giving (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each. Except that to the extent that compliance with the requirements of clause (2) of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by rules and regulations promulgated by the secretary.

(j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the secretary determines to be, and by regulations prescribes, as necessary, in order to fully inform purchasers as to its value for such uses.

(k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservatives unless it bears labeling stating that fact. Except that to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by rules and regulations promulgated by the secretary.

(l) If it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded.

History: L. 1953, ch. 286, § 11; L. 1974, ch. 352, § 105; July 1; amended 2010.

65-666. Permits for certain classes of food; regulations governing conditions of issuance; suspension and reinstatement, when; access of facilities for inspection. (a) Whenever the secretary finds after investigation that the distribution in Kansas of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered commerce, it then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health. After the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the secretary as provided by such regulations.

(b) The secretary is authorized to use emergency adjudicative proceedings to suspend any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the secretary shall, immediately after prompt hearing in accordance with the provisions of the Kansas administrative procedure act and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

(c) Any officer or employee duly designated by the secretary shall have access to any factory or establishment, the operator of which holds a permit from the secretary for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

History: L. 1953, ch. 286, § 12; L. 1974, ch. 352, § 106; L. 1988, ch. 356, § 186; July 1, 1989.

65-667. Same; limiting quantities of certain substances added to foods; regulations governing. (a) Any added poisonous or deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity, or any color additive, shall, with respect to any particular use or intended use be deemed unsafe for the purpose of application of clause (2) (A) of K.S.A. 65-664 (a) with respect to any food, K.S.A. 65-668 (a) with respect to any drug or device, or K.S.A. 65-670 (a) with respect to any cosmetic, unless there is in effect a regulation pursuant to subsection (b) of this section limiting the quantity of such substance, and the use or intended use of such substance, conform to the terms prescribed by such regulation. While such regulation relating to such substance is in effect, a food, drug or cosmetic shall not, by reason of bearing or containing such substance in accordance with the regulation, be considered adulterated within the meaning of clause (1), of subsection (a) of K.S.A. 65-664, subsection (a) of K.S.A. 65-668 or subsection (a) of K.S.A. 65-670.

(b) The secretary, whenever public health or other considerations in the state so require, is authorized to adopt, amend, or repeal regulations whether or not in accordance with regulations promulgated under the federal act prescribing therein tolerances for any added poisonous or deleterious substances, for food additives, for pesticide chemicals in or on raw agricultural commodities, or for color additives, including, but not limited to, zero tolerances, and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities, and prescribing the conditions under which a food additive or a color additive may be safely used and exemptions where such food additive or color additive is to be solely for investigational or experimental purposes, upon its own motion or upon the petition of any interested party requesting that such a regulation be established, and it shall be incumbent upon such petitioner to establish by data submitted to the secretary that a necessity exists for such regulation, and that its effect will not be detrimental to the public health. If the data furnished by the petitioner is not

sufficient to allow the secretary to determine whether such regulations should be promulgated, the secretary may require additional data to be submitted and failure to comply with the request shall be sufficient grounds to deny the request. In adopting, amending or repealing regulations relating to such substances, the secretary shall consider among other relevant factors, the following which the petitioner, if any, shall furnish:

(1) The name and all pertinent information concerning such substance including where available, its chemical identity and composition, a statement of the conditions of the proposed use, including directions, recommendations and suggestions and including specimens of proposed labeling, all relevant data bearing on the physical or other technical effect and the quantity required to produce such effect.

(2) The probable composition of, or other relevant exposure from the article and of any substance formed in or on a food, drug, or cosmetic resulting from the use of such substance.

(3) The probable consumption of such substance in the diet of man and animals taking into account many chemically or pharmacologically related substance in such diet.

(4) Safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of such substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data.

(5) The availability of any needed practicable methods of analysis for determining the identity and quantity of (i) such substance in or on an article, (ii) any substance formed in or on such article because of the use of such substance, and (iii) the pure substance and all intermediates and impurities.

(6) Facts supporting a contention that the proposed use of such substance will serve a useful purpose.

(c) In adopting regulations under subsection (b) of this section, the secretary is authorized to adopt by reference those lists pertaining to or reflecting the same judgments which have been promulgated as regulations under the federal act and have been published in the federal register, if the regulations adopted by reference are in effect on the date adopted, and regulations so adopted shall remain the regulations of the secretary until changed by the secretary. In so doing, the secretary additionally may add to or delete from such lists, whenever in his judgment the statutory guidelines of this section so require.

History: L. 1953, ch. 286, § 13; L. 1965, ch. 377, § 4; L. 1974, ch. 352, § 107; July 1.

65-668. Same; drugs or devices deemed adulterated, when. A drug or device shall be deemed to be adulterated:

(a) (1) If it consists in whole or in part of any filthy, putrid, or decomposed substance; or (2) (A) if it has been produced, prepared, packed or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or (B) if it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this act as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess; or (3) if it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if (A) it is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of K.S.A. 65-667, or (B) it is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of K.S.A. 65-667.

(b) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal act. No drug defined in any official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States it shall be subject to the requirements of the United States pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic phamacopoeia of the United States and not to those of the United States pharmacopoeia.

(c) If it is not subject to the provisions of paragraph (b) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

(d) If it is a drug and any substance has been (1) mixed or packed therewith so as to reduce its quality or strength; or (2) substituted wholly or in part therefor.

History: L. 1953, ch. 286, § 14; L. 1965, ch. 377, § 5; July 1.

65-669. Same; drugs or devices deemed misbranded, when. A drug or device shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing: (1) the name and place of business of the manufacturer, the packer or the distributor, except that in the case of a prescription drug it shall bear the name and place of business of the person responsible for the production of the finished dosage form of the drug, the packer and the distributor; except that nothing in clause (1) of this paragraph shall be construed to apply to wholesalers and the requirement of clause (1) shall be satisfied by stating such information on the label of the drug and filing a statement with such information with the secretary which shall be made available by the secretary on request to local, public and private health agencies, poison control centers, licentiates of the healing arts, the state board of

pharmacy, consumers and others to promote the purposes of this act; in no event, however, shall the label contain less information than required under federal law; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, except that under clause (2) of this paragraph reasonable variations shall be permitted and exemptions as to small packages shall be allowed, in accordance with regulations prescribed by the secretary, or issued under the federal act.

(c) If any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If it is for use by man and contains any quantity of narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substance, which derivative has been by the secretary after investigation, found to be, and by regulations under this act, or by regulations issued pursuant to 21 U.S.C. 352 (d), designated as, habit forming, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "warning-may be habit forming."

(e) (1) If it is a drug, unless its label bears, to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula), (i) the established name (as defined in subparagraph (2)) of the drug, if such there be; and (ii) in case it is fabricated from two or more ingredients, the established name of each active ingredient, including the kind and quantity of proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein. The requirements for stating the quantity of the active ingredients, other than the quantity of those specifically named in this paragraph, shall apply only to prescription drugs. To the extent that compliance with the requirements of clause (ii) of this subparagraph is impracticable, exemptions shall be allowed under regulations promulgated by the secretary, or under the federal act.

(2) As used in this paragraph (e), the term "established name," with respect to a drug or ingredient thereof, means (A) the applicable official name designated pursuant to 21 U.S.C. 358, or (B) if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof in such compendium or (C) if neither clause (A) nor clause (B) of this subparagraph applies, then the common or usual name, if any, of such drug or of such ingredient. Where clause (B) of this subparagraph applies to an article recognized in the United States pharmacopoeia and in the homeopathic pharmacopoeia under different official titles, the official title used in the United States pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the homeopathic pharmacopoeia shall apply.

(f) Unless its labeling bears (1) adequate directions for use; and (2) such adequate warning against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users. Where any requirement of clause (1) of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the secretary shall promulgate regulations exempting such drug or device from such requirements. Articles exempted under regulations issued under 21 U.S.C. 352 (f) may also be exempt.

(g) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein. The method of packing may be modified with the consent of the secretary, or if consent is obtained under the federal act. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia with respect to the packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States, and not to those of the United States pharmacopoeia. In the event of inconsistency between the requirements of this paragraph and those of paragraph (e) as to the name by which the drug or its ingredients shall be designated, the requirements of paragraph (e) shall prevail.

(h) If it has been found by the secretary or under the federal act to be a drug liable to deterioration, unless it is packed in such form and manner, and its label bears a statement of such precautions, as the regulations adopted by the secretary require as necessary for the protection of public health. No such regulations shall be established for any drug recognized in an official compendium until the secretary shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(i) (1) If it is a drug and its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug.

(j) If it is dangerous to health when used in the dosage, or with the frequency of duration prescribed, recommended, or suggested in the labeling thereof.

(k) If it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless (1) it is from a batch with respect to which a certificate or release has been issued pursuant to 21 U.S.C. 356, and (2) such certificate or release is in effect with respect to such drug.

(l) If it is, or purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof, unless (1) it is from a batch with respect to which a certificate or release has been issued pursuant to 21 U.S.C. 357,

and (2) such certificate or release is in effect with respect to such drug. This paragraph shall not apply to any drug or class of drugs exempted by regulations promulgated under 21 U.S.C. 357 (c) or (d). For the purpose of this subsection the term "antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by a microorganism and which has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of any such substance).

(m) If it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, prescribed under the provisions of K.S.A. 65-667 or of the federal act.

(n) In the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of (1) the established name, as defined in subsection (e) (2) of this section, (2) the formula showing quantitatively each ingredient of such drug to the extent required for labels under 21 U.S.C. 352 (e), and (3) such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations issued under the federal act.

(o) If a trademark, trade name or other identifying mark, imprint or device of another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

(p) Drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling or packaging requirements of this act if such drugs and devices are being delivered, manufactured, processed, labeled, repacked or otherwise held in compliance with regulations issued by the secretary or under the federal act.

(q) A drug intended for use by man which (A) is a habit-forming drug to which K.S.A. 65-668 applies; or

(B) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or

(C) is limited by an approved application under 21 U.S.C. 355 or K.S.A. 65-669a to use under the professional supervision of a practitioner licensed by law to administer such drug, shall be dispensed only

(i) upon a written prescription of a practitioner licensed by law to administer such drug or upon the written prescription of a mid-level practitioner as defined in subsection (ii) of K.S.A. 65-1626 and amendments thereto, or

(ii) upon an oral prescription of such practitioner or mid-level practitioner which is reduced promptly to writing and filed by the pharmacist, or

(iii) by refilling, any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist. The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed to be an act which results in a drug being misbranded while held for sale.

(r) Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug or by filling or refilling a written or oral prescription of a mid-level practitioner as defined in subsection (ii) of K.S.A. 65-1626 and amendments thereto shall be exempt from the requirements of this section, except subsections (a), (i) (2) and (3), (k), and (l), and the packaging requirements of subsections (g) and (h), if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber and, if stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of paragraph (q) of this section.

(s) The secretary may, by regulation, remove drugs subject to subsection (d) of this section and K.S.A. 65-669a from the requirements of paragraph (q) of this section when such requirements are not necessary for the protection of the public health. Drugs removed from the prescription requirements of the federal act by regulations issued thereunder may also, by regulations issued by the secretary, be removed from the requirements of paragraph (q) of this section.

(t) A drug which is subject to paragraph (q) of this section shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear the statement "caution: federal law prohibits dispensing without prescription," or "caution: state law prohibits dispensing without prescription." A drug to which paragraph (q) of this section does not apply shall be deemed to be misbranded if at any time prior to dispensing its label bears the caution statement quoted in the preceding sentence.

(u) Nothing in this section shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications of narcotic drugs or marijuana as defined in the applicable federal and state laws relating to narcotic drugs and marijuana.

History: L. 1953, ch. 286, § 15; L. 1965, ch. 377, § 6; L. 1972, ch. 230, § 1; L. 1974, ch. 352, § 108; L. 1977, ch. 215, § 1; L. 1999, ch. 115, § 8; Apr. 1, 2000.

65-669a. New drugs; selling, offering or giving away, restrictions; investigational uses. (a) No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless

(1) an application with respect thereto has been approved and such approval has not been withdrawn under 21 U.S.C.A. 355, or

(2) when not subject to the federal act, unless such drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the secretary an application setting forth

(A) full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use;

(B) a full list of the articles used as components of such drug;

(C) a full statement of the composition of such drug;

(D) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing and packing of such drug;

(E) such samples of such drug and of the articles used as components thereof as the secretary may require; and

(F) specimens of the labeling proposed to be used for such drug.

(b) An application provided for in subsection (a)(2) of this section shall become effective 180 days after the filing thereof, except that if the secretary finds, after due notice to the applicant and giving the applicant an opportunity for a hearing, that the drug is not safe or not effective for use under the conditions prescribed, recommended or suggested in the proposed labeling thereof, the secretary shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) An order refusing to permit an application under this section to become effective may be revoked by the secretary.

(d) This section shall not apply to:

(1) A drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the drug is plainly labeled in compliance with regulations issued by the secretary or pursuant to 21 U.S.C.A. 355 or 21 U.S.C.A. 357; or

(2) a drug sold in this state at any time prior to the enactment of this act or introduced into interstate commerce at any time prior to the enactment of the federal act; or

(3) any drug which is licensed under the virus, serum, and toxin act of July 1, 1902 (U.S.C. 1958 ed. title 42, chapter 6A, sec. 262); or

(4) any drug which is subject to subsection (1) of K.S.A. 65-669 and amendments thereto.

(e) The provisions of subsection (n) of K.S.A. 65-656 and amendments thereto shall not apply to any drug which was, on October 9, 1962, or on the date immediately preceding the enactment of this subsection,

(1) commercially sold or used in this state or in the United States,

(2) not a new drug as defined by subsection (n) of K.S.A. 65-656 and amendments thereto as then in force, and

(3) was not covered by an effective application under this section or under 21 U.S.C.A. 355, when such drug is intended solely for use under conditions prescribed, recommended or suggested in labeling with respect to such drug.

History: L. 1965, ch. 377, § 7; L. 1974, ch. 352, § 109; L. 1988, ch. 356, § 187; July 1, 1989.

65-670. Same; cosmetic deemed adulterated, when. A cosmetic shall be deemed to be adulterated:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual: Provided, That this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution-this product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying direction should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness," and the labeling of which bears adequate direction for such preliminary testing. For the purposes of this paragraph and the paragraph (e) the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

(b) If it consists in whole or in part of any filthy, putrid, or decomposed substance.

(c) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(d) If its container is composed in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(e) If it is not a hair dye and it bears or contains a coal-tar color other than one from a batch which has been certified under authority of the federal act.

History: L. 1953, ch. 286, § 16; June 30.

65-671. Same; cosmetic deemed misbranded, when. A cosmetic shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the secretary.

(c) If any word, statement or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If its container is so made, formed, or filled as to be misleading.

History: L. 1953, ch. 286, § 17; L. 1974, ch. 352, § 110; July 1.

65-672. Same; advertisements of food, drugs, devices or cosmetics deemed false, when. (a) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) For the purpose of this act the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, venereal disease, shall also be deemed to be false, except that no advertisement not in violation of subsection (a) shall be deemed to be false under this subsection if it is disseminated only to a physician, dentist or veterinarian, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public-health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: Provided, That whenever the secretary determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the secretary shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such condition and restriction as the secretary may deem necessary in the interests of public health: Provided, That this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

History: L. 1953, ch. 286, § 18; L. 1974, ch. 352, § 111; July 1.

65-673. Rules and regulations; authority of secretary; hearings. (a) The authority to promulgate rules and regulations for the efficient enforcement of this act is hereby vested in the secretary. The secretary is hereby authorized to make the regulations promulgated under this act conform, insofar as practicable, with those promulgated under the federal act.

(b) Hearings authorized or required by this act shall be conducted by the secretary or by a hearing officer designated by the secretary for this purpose. The secretary shall prescribe by rule and regulation the procedure for conducting hearings. The hearing officer shall have the same powers in conducting a hearing as the secretary. In conducting a hearing the secretary or the hearing officer may issue subpoenas to compel the attendance of witnesses, administer oaths, take testimony, require the production of books, papers, records, correspondence or other documents which the secretary or the hearing officer deems relevant and render decisions. In case of the refusal of any person to comply with any subpoena issued under this section or to testify with respect to any matter which the person may be lawfully questioned, the district court of any county on application of the secretary may issue an order requiring such person to comply with the subpoena and to testify, and any failure to obey the order of the court may be punished by the court as a contempt thereof. Notwithstanding the foregoing provisions of this subsection, hearings on an order, as defined in subsection (d) of K.S.A. 77-502 and amendments thereto, shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) Before promulgating any rules and regulations contemplated by K.S.A. 65-663, 65-665, 65-666, 65-669, or 65-672, and amendments thereto, the secretary shall give appropriate notice of the proposal and of the time and place for a hearing as provided in this act. Such rules and regulations may be amended or revoked in the same manner as is provided by law for adoption.

History: L. 1953, ch. 286, § 19; L. 1965, ch. 506, § 27; L. 1974, ch. 352, § 112; L. 1982, ch. 258, § 5; L. 1988, ch. 356, § 188; July 1, 1989.

65-674. Same; free access to establishments and vehicles for inspections and samples. The secretary or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in commerce, for the purpose: (1) Of inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this act are being violated, and (2) to secure samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for such sample. It shall be the duty of the secretary to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this act is being violated.

History: L. 1953, ch. 286, § 20; L. 1974, ch. 352, § 113; July 1.

65-675. Same; reports and dissemination of information. (a) The secretary may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this act, including the nature of the charge and the disposition thereof.

(b) The secretary may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as the secretary deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in the section shall be construed to prohibit the secretary from collecting, reporting and illustrating the results of the investigations of the secretary.

History: L. 1953, ch. 286, § 21; L. 1974, ch. 352, § 114; July 1.

65-676. Same; enforcement of act. The enforcement of the provisions of this act and all acts ancillary hereto shall be the duty of the department of agriculture. The secretary is hereby authorized to appoint the necessary personnel to properly administer this act.

History: L. 1953, ch. 286, § 22; L. 1974, ch. 352, § 115; July 1; amended 2010

65-677. Same; examinations by office of laboratory services and at state educational institutions; expenses. The examinations of foods, drugs, devices and cosmetics required for the proper enforcement of this act may be made by the office of laboratory services or by specialists and experts in the various fields of science at the state educational institutions, and the secretary shall pay the actual and necessary expenses of such specialists and experts.

History: L. 1953, ch. 286, § 23; L. 1974, ch. 352, § 116; L. 1975, ch. 312, § 9; July 1.

65-678. Same; cooperation with federal food and drug administration. The secretary is hereby authorized to confer and cooperate with the federal food and drug administration in the enforcement of the national food, drug and cosmetic act as it may apply to food, liquor, drugs, and cosmetic products received in this state from other states, territories or foreign countries.

History: L. 1953, ch. 286, § 24; L. 1974, ch. 352, § 117; July 1.

65-679. Same; act not to limit authority established under certain other acts. Nothing in this act shall be construed as limiting or abridging the authority of the secretary of agriculture established under the Kansas dairy law, K.S.A. 65-771 through 65-791, and amendments thereto; or the Kansas commercial feeding stuffs law, K.S.A. 2-1001 through 2-1013, and amendments thereto.

History: L. 1953, ch. 286, § 25; L. 1974, ch. 352, § 118; L. 2001, ch. 32, § 23; L. 2002, ch. 25, § 1; July 1.

65-679a. Dimethyl sulfoxide; labeling and information requirements if sold other than by prescription. (a) Any dimethyl sulfoxide (DMSO) sold in this state other than by prescription shall be labeled by the manufacturer and seller. The label shall contain a description of all of the contents in the solution, a statement of purity, the percent of dimethyl sulfoxide (DMSO) in the solution and the manufacturer's name and address. Whenever dimethyl sulfoxide (DMSO) is sold or otherwise supplied, the seller or supplier shall give additional printed material, approved by the secretary, to the person receiving the dimethyl sulfoxide (DMSO) that provides adequate warning against use that may be dangerous to the health of the user.

(b) The secretary of agriculture may adopt rules and regulations necessary to administer the provisions of this section.

(c) This section shall be part of and supplemental to the Kansas food, drug and cosmetic act.

History: L. 1982, ch. 255, § 1; July 1; amended 2010.

65-680. Same; invalidity of part. If any provision of this act is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and applicability thereof to other persons and circumstances shall not be affected thereby.

History: L. 1953, ch. 286, § 26; June 30.

65-681. Unlawful labeling of a product as honey or imitation honey; "person" defined. It shall be unlawful for any person to package any product and label the product as "honey" or "imitation honey" or to use the word honey in any prominent location on the label of such product or to sell or offer for sale any product which is labeled "honey" or "imitation honey" or which contains a label with the word "honey" prominently displayed thereon, unless such product is pure honey manufactured by honeybees.

As used in this act "person" shall mean and include individuals, corporations, associations, receivers, and trustees.

History: L. 1974, ch. 1, § 1; July 1.

65-682. Same; penalty. Any person violating or failing to comply with any of the provisions of this act shall be deemed guilty of a class C misdemeanor.

History: L. 1974, ch. 1, § 2; July 1.

65-683. Same; administration and enforcement. The secretary of agriculture shall be charged with the administration and enforcement of the provisions of this act.

History: L. 1974, ch. 1, § 3; L. 1975, ch. 462, § 73; July 1; amended 2010.

65-684. Same; injunction. In addition to the penalties provided in K.S.A. 65-682 the secretary of agriculture is hereby authorized to apply to the district court for, and such court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of K.S.A. 65-681.

History: L. 1974, ch. 1, § 4; L. 1975, ch. 462, § 74; July 1; amended 2010.

65-685. Same; duty of county or district attorney. It shall be the duty of each county or district attorney to whom the secretary of agriculture reports any violation of this act, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History: L. 1974, ch. 1, § 5; L. 1975, ch. 462, § 75; July 1; amended 2010.

65-686. Same; minor violations of act; notice. Nothing in this act shall be construed as requiring the secretary of agriculture to report for the institution of proceedings under this act, minor violations of this act, whenever the secretary believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

History: L. 1974, ch. 1, § 6; L. 1975, ch. 462, § 76; July 1; amended 2010.

65-687. Limitation on liability of donor for donated food. (a) As used in this act, the following terms shall mean:

(1) "Canned food," any food commercially processed and prepared for human consumption.

(2) "Perishable food," any food which may spoil or otherwise become unfit for human consumption because of its nature, type or physical condition. This term includes, but is not limited to, fresh and processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits and vegetables and foods which have been packaged, refrigerated or frozen.

(b) All other provisions of law notwithstanding, a good faith donor of canned or perishable food, to a bona fide charitable or not for profit organization for ultimate distribution to needy individuals, shall not be subject to criminal or civil liability arising from an injury or death due to the condition of such food unless such injury or death is a direct result of the willful, wanton, malicious or intentional misconduct of the donor.

(c) All other provisions of law notwithstanding, a bona fide charitable or not for profit organization which in good faith receives and distributes food, which complies with K.S.A. 65-655 et seq., and amendments thereto, at the time it was donated and which is fit for human consumption at the time it is distributed, without charge, shall not be subject to criminal or civil liability arising from an injury or death due to the condition of such food unless such injury or death is a direct result of the willful, wanton, malicious or intentional misconduct of such organization.

(d) The provisions of this act shall govern all good faith donations of canned or perishable food which is not readily marketable due to appearance, freshness, grade, surplus or other conditions, but nothing in this act shall restrict the authority of any appropriate agency to regulate or ban the use of such food for human consumption.

History: L. 1983, ch. 202, § 1; L. 1996, ch. 101, § 1; July 1.

65-688. Retail food stores and food processing plants; inspection fees; rules and regulations. (a) As used in this section and K.S.A. 65-689, and amendments thereto:

(1) ‘‘Retail food store’’ means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include roadside markets that offer only fresh fruits and vegetables for sale, food service establishments or food and beverage vending machines.

(2) ‘‘Food processing plant’’ means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to the consumer. ‘‘Food processing plant’’ shall not include any operation or individual beekeeper that produces or stores honey who does not process or offer the honey for sale at retail.

(3) ‘‘Food’’ means a raw, cooked or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption or chewing gum.

(4) ‘‘Secretary’’ means the secretary of agriculture.

(b) In order to reimburse the state of Kansas for inspections by the secretary of agriculture of retail food stores and food processing plants, the secretary of agriculture shall adopt rules and regulations establishing a graduated inspection fee schedule to cover all of the cost of inspection of retail food stores and food processing plants which shall not exceed $200 per calendar year for each retail food store and food processing plant location. Whenever the secretary determines that the total amount of revenue derived from the fees collected pursuant to this section are insufficient to carry out the purposes for which the fees are collected, the secretary may amend such rules and regulations to increase the amount of the fee or fees, except that the amount of any fee shall not exceed the maximum amount authorized by this subsection. Whenever the amount of fees collected pursuant to this subsection provides revenue in excess of the amount necessary to carry out the purposes for which such fees are collected, it shall be the duty of the secretary to decrease the amount of the fees prescribed for retail food stores or food processing plants by amending the rules and regulations which fix the fees, as the case maybe.

(c) All moneys received as fees under this section shall be remitted to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the food safety fee fund.

(d) The secretary of agriculture shall adopt rules and regulations necessary to carry out the provisions of this section including establishing minimum conditions necessary to operate and maintain a retail food store or a food processing plant in a safe and sanitary manner, and establishing enforcement provisions necessary to effect complete compliance with such standards.

History: L. 2008, ch. 48, § 6, July 1.

65-689. Same; license requirements, fees, inspections, denial, hearing, display. (a) It shall be unlawful for any person to engage in the business of conducting a retail food store or food processing plant unless such person shall

have in effect a valid license therefor issued by the secretary. For the purpose of this section, the sale of food in the same location less than seven days in any calendar year shall be construed as the occasional sale of food. Nothing in this act shall prevent the secretary from inspecting any retail food store or food processing plant when a complaint against such retail food store or food processing plant is transmitted to the secretary or any authorized agent thereof.

(b) Applications for such licenses shall be made on forms prescribed by the secretary, and each such application shall be accompanied by an application fee and by a license fee. Application fees may be adjusted in accordance with the type of retail food store or food processing plant or based on other criteria as determined by the secretary. Such license fee shall be fixed in an amount which, together with the application fee, is sufficient to defray the cost of administering the retail food store and food processing plant inspection and licensure activities of the secretary. Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the retail food store or food processing plant designated in the application, to determine that it complies with rules and regulations adopted pursuant to subsection (d) of K.S.A. 65-688, and amendments thereto. If the retail food store or food processing plant is found to be in compliance, the secretary shall issue the license. If the application for license is denied, the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereon if a written request therefor is filed with the secretary within 20 days of the date such notice is sent. Such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act.

(c) Every license issued hereunder shall be displayed conspicuously in the retail food store or food processing plant for which it is issued, and no such license shall be transferable to any other person or location. Whenever any such license is lost, destroyed or mutilated, a duplicate license shall be issued to any otherwise qualified licensee upon application therefor and the payment of a fee in the amount of $5.

(d) A plant registered by the department of agriculture pursuant to article 7 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, or licensed or registered by the department of agriculture pursuant to article 6a of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, shall not be required to obtain a separate license pursuant to this section.

History: L. 2008, ch. 48, § 7, July 1.

65-690. (a) If the secretary of agriculture finds that the public health or safety is endangered by the continued operation of a food processing plant or retail food store, the secretary may suspend, temporarily, the license of such establishment without notice or hearing in accordance with the emergency adjudication procedures of the provisions of the Kansas administrative procedure act.

(b) In no case shall a temporary suspension of a license under this section be in effect for a period of time in excess of 90 days. At the end of such period of time, the licensee shall be reinstated to full licensure unless the secretary has suspended or revoked the license, after notice and hearing, or the license has expired as otherwise provided under the Kansas food, drug and cosmetic act, and amendments thereto, or any rules and regulations or orders issued thereunder.

History: L. 2009, Ch. 59 § 4, July 1.

FOOD SERVICE AND LODGING ACT

36-501. Definitions. As used in the food service and lodging act, the following words and phrases shall have the meanings respectively ascribed to them herein: (a) ''Hotel'' means every building or other structure which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are offered for pay primarily to transient guests and in which four or more rooms are used for the accommodation of such guests, regardless of whether such building or structure is designated as a cabin camp, tourist cabin, motel or other type of lodging unit.

(b) ''Rooming house'' means every building or other structure which is kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests and in which eight or more guests may be accommodated, but which does not maintain common facilities for the serving or preparation of food for such guests.

(c) ''Boarding house'' means every building or other structure which is kept, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests and in which eight or more guests may be accommodated, and which maintains common facilities for the serving or preparation of food for such guests. The term ''boarding house'' shall not include facilities licensed under paragraph (5) of subsection (a) of K.S.A. 75-3307b and amendments thereto.

(d) ''Lodging establishment'' means a hotel, rooming house or boarding house.

(e) ''Food service establishment'' means any place in which food is served or is prepared for sale or service on the premises or elsewhere. Such term shall include, but not be limited to, fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tea room, sandwich shop, soda fountain, tavern, private club, roadside stand, industrial-feeding establishment, catering kitchen, commissary and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

(f) ''Food'' means any raw, cooked or processed edible substance, beverage or ingredient used or intended for use or for sale, in whole or in part, for human consumption.

(g) ‘‘Food vending machine’’ means any self-service device which, upon insertion of a coin, coins or tokens, or by other similar means, dispenses unit servings of food, either in bulk or in packages without the necessity of replenishing the device between each vending operation but shall not include any vending machine dispensing only bottled or canned soft drinks, or prepackaged and nonpotentially hazardous food, chewing gum, nuts or candies.

(h) ‘‘Food vending machine company’’ means any person who is in the business of operating and servicing food vending machines.

(i) ‘‘Food vending machine dealer’’ means any manufacturer, remanufacturer or distributor of food vending machines who sells food vending machines to food vending machine companies.

(j) ‘‘Person’’ means an individual, partnership, corporation or other association of persons.

(k) ‘‘Municipality’’ means any city or county of this state.

(l) ‘‘Secretary’’ means the secretary of agriculture.

(m) ‘‘Department’’ means the Kansas department of agriculture.

History: L. 1975, ch. 314, § 5; L. 1986, ch. 324, § 1; L 2008, ch. 84, § 9; Oct. 1.

36-502. License for lodging establishment required; application, form; inspection; denial, hearing; designation of type of unit; display; duplicate; fees; existing licenses continued in effect. (a) It shall be unlawful for any person to engage in the business of conducting a lodging establishment unless such person shall have in effect a valid license therefor issued by the secretary of agriculture. Applications for such licenses shall be made on forms prescribed by the secretary, and each
such application shall be accompanied by the appropriate license fee required by subsection (c) of this section. Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the lodging establishment designated in the application, to determine that it complies with the standards for lodging establishments promulgated pursuant to this act. If such lodging establishment is found to be in compliance, the secretary shall issue the license. If the application for license is denied, the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereon if a written request therefor is filed with the secretary within 20 days of the date such notice is sent. Such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act.

(b) Each license shall designate whether the licensed lodging unit is a hotel, rooming house or boarding house. Any person obtaining a license to engage in the business of conducting a rooming house or boarding house shall not have the right to use the name ‘‘hotel’’ in connection with such business. Every license issued hereunder shall be displayed conspicuously in the lodging establishment for which it is issued, and no such license shall be transferable to any other person or location. Whenever any such license is lost, destroyed or mutilated, a duplicate license shall be issued to any otherwise qualified licensee upon application therefor and the payment of a fee in the amount of $3.

(c) The fee for a license to conduct a lodging establishment in this state for all or any part of any calendar year shall be $30, except that the fee for any lodging establishment containing 10 sleeping rooms shall be $35 and for every additional 10 rooms therein, an additional fee of $5 shall be charged. All lodging establishments which are new, newly constructed or have a change of ownership shall pay an application fee which may be adjusted in accordance with the type of establishment or based on other criteria as determined by the secretary, but in no event shall any application fee exceed $100 in addition to the license fee.

(d) Any person who, on the effective date of this act, has a valid license to operate a hotel or rooming house shall be a licensee under the provisions of this act, and any such license is hereby deemed to be a license to operate a lodging establishment issued under the provisions of this act.

History: L. 1975, ch. 314, § 6; L. 1978, ch. 154, § 1; L. 1984, ch. 313, § 55; L 2008, ch. 84, § 10; Oct. 1.

36-503. License for food service establishment required; exceptions; application, form, application and license fees, exemptions; inspection; denial, hearing; display; duplicate; existing licenses continued in effect. (a) It shall be unlawful for any person to engage in the business of conducting a food service establishment unless such person shall have in effect a valid license therefor issued by the secretary of agriculture, except that any food service establishment providing only a device for the convenience and operation by a customer for the purpose of heating prepackaged food with no provision for consumption of food on the premises, or any person engaged only in the serving of food on railway dining cars or in the occasional sale or serving of food shall not be required to obtain a license under this section. For the purpose of this section, the sale or serving of food in the same location less than seven days in any calendar year shall be construed as the occasional sale or serving of food. For the purpose of this section, hotels that provide only complimentary food service to only that hotel’s overnight guests shall not be required to purchase a food service license separate from the lodging establishment license. This exemption from licensing does not exempt any food service establishment inside the hotel from inspection or regulation. Any person not otherwise required to be licensed under this section who prepares, services or sells food for the sole purpose of soliciting funds to be used for community projects, educational and youth activities or humanitarian purposes, shall not be required to obtain a license under this section Nothing in this act shall prevent the secretary of agriculture from inspecting any food service establishment when a complaint against such food service establishment is transmitted to the secretary of agriculture or any authorized agent thereof.

(b) A food service establishment operated in connection with any premises licensed, registered or permitted by the department of health and environment pursuant to any other law, which is inspected and regulated pursuant to that law, shall not be required to obtain a license under subsection (a). No provision of this act authorizes the secretary of agriculture to inspect or cause to be inspected such food service establishment under the provisions of

this act. This exemption shall not apply to a food service establishment whose primary function is not operated in connection with any premises licensed, registered or permitted pursuant to such other law.

(c) Applications for licenses under subsection (a) shall be made on forms prescribed by the secretary, and each such application shall be accompanied by an application fee and by a license fee, each of which shall be established in an amount fixed by rules and regulations adopted by the secretary of agriculture. Application fees may be adjusted in accordance with the type of establishment or based on other criteria as determined by the secretary, but in no event shall any application fee exceed $200. Such license fee shall not exceed $200 and shall be fixed in an amount which, together with the application fee, is sufficient to defray the cost of administering the food service establishment inspection and licensure activities of the secretary. Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the food service establishment designated in the application, to determine that it complies with the standards for food service establishments promulgated pursuant to this act. If such food service establishment is found to be in compliance, the secretary shall issue the license. If the application for license is denied, the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereon if a written request therefor is filed with the secretary within 20 days of the date such notice is sent. Such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act.

(D) Every license issued hereunder shall be displayed conspicuously in the food service establishment for which it is issued, and no such license shall be transferable to any other person or location. Whenever any such license is lost, destroyed or mutilated, a duplicate license shall be issued to any otherwise qualified licensee upon application therefor and the payment of a fee in the amount of $5.

(e) A premises where prepackaged individual meals are distributed to persons eligible under the federal older Americans act shall not pay any fee prescribed under subsection (c).

History: L. 1975, ch. 314, § 7; L. 1976, ch. 205, § 1; L. 1978, ch. 154, § 2; L. 1981, ch. 181, § 1; L. 1982, ch. 181, § 1; L. 1984, ch. 313, § 56; L. 1993, ch. 196, § 1; L. 2001, ch. 203, § 1; L 2008, ch. 84, § 11; Apr. 24; L. 2008, ch. 84, § 12; Oct. 1; L. 2009, Ch. 59 § 5, July 1.

36-504. License for food vending machine companies required; application, form, application fee; inspection; denial, hearing; license fee; display; duplicate; records; information on machine; machines from licensed dealers only; inoperative machines; additional machines; license for vending machine dealers; application, form, fee; certain reports required. (a) It shall be unlawful for any person to engage in the business of conducting a food vending machine company unless such person shall have in effect a valid license therefor issued by the secretary of agriculture. Applications for such licenses shall be on forms prescribed by the secretary, and each such application shall specify the brand name and serial number of each food vending machine to be operated and serviced by the applicant during the period of licensure and shall be accompanied by an application fee in an amount fixed by rules and regulations adopted by the secretary not to exceed $100 and by the appropriate license fee required by subsection (b). Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the applicant and each food vending machine for which the applicant is to be licensed, to determine that they are in compliance with the applicable food service standards promulgated pursuant to this act. If the applicant and such machines are found to be in compliance with such standards, the secretary shall issue the license. If the application for license is denied, the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereof if a written request therefor is filed with the secretary within 20 days of the date such notice is sent. Such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act.

(b) The license fee for a food vending machine company shall be an amount equal to the product of the total number of food vending machines to be operated and serviced by the food vending machine company during the calendar year, multiplied by $3, except that no food vending machine shall be included in such total number which is operated and serviced by a state institution or a public school.

(c) Every license issued hereunder shall be displayed conspicuously on the premises of the food vending machine company for which it is issued, and no such license shall be transferable to any other person nor shall such license be valid for the operation and service of any food vending machines other than those specified in the application for a license under subsection (a) or those additional food vending machines for which operation and servicing are authorized pursuant to subsection (f). Whenever any such license is lost, destroyed or mutilated, a duplicate license shall be issued to any otherwise qualified licensee upon application therefor and the payment of a fee in the amount of $5.

(d) Each licensed food vending machine company shall keep a current record of the location of each food vending machine which such company is licensed to operate and service, and such record shall be available at any reasonable time to the secretary. Each licensed food vending machine company shall cause the name of such company, the service telephone number and such additional information as the secretary may require, to be displayed conspicuously on each food vending machine that such company is licensed to operate and service.

(e) Each licensed food vending machine company shall notify the secretary within 10 days of the brand name and serial number of all food vending machines that become inoperative and are thereafter disposed of by such company or that are obtained by such company for use in addition to those which the food vending machine company is currently licensed to operate and service. Except for food vending machines obtained through isolated or occasional purchases thereof from a licensed food vending machine company, food vending machine companies shall be licensed to operate and service only food vending machines which are obtained from food vending machine dealers licensed pursuant to subsection (g).

(f) Whenever food vending machines are obtained by a licensed food vending machine company which are to be operated and serviced in addition to those currently authorized under the license, such company may apply to the secretary to include such additional machines under the license of such company. Such application shall be in the form prescribed by the secretary and each such application shall specify the brand name and serial number of each such additional machine and shall be accompanied by a fee of $2 for each such additional machine. Prior to the issuance of such authorization, the secretary shall inspect or cause to be inspected each additional food vending machine to determine that it is in compliance with the applicable food service standards promulgated pursuant to this act. Only such additional machines which are in compliance with such standards shall be included under the license of such company.

(g) It shall be unlawful for any person to engage in business as a food vending machine dealer and to sell food vending machines to food vending machine companies licensed in this state unless such person shall have a valid license therefor issued by the secretary of health and environment. Applications for such licenses shall be on forms prescribed by the secretary and each such application shall be accompanied by the fee prescribed in this subsection. A person without this state may make application to the secretary for a license as a food vending machine dealer and be granted such a license by the secretary and thereafter shall be subject to all of the applicable provisions of this act and entitled to act as a licensed food vending machine dealer in this state, subject however, to such person filing proof with the application to the secretary of health and environment that such person has appointed the secretary of state of Kansas as agent for receipt of service of process relating to any matter or issue arising under this act. The fee for a food vending machine dealer's license for all or any part of any calendar year shall be $25.

(h) A licensed food vending machine dealer shall report to the secretary on or before the last day of each calendar month all sales of food vending machines made during the preceding month to Kansas vending machine companies, on forms prescribed by such secretary, showing the name and address of the purchaser, brand name and serial number of the machine and its sale price.

History: L. 1975, ch. 314, § 8; L. 1976, ch. 205, § 2; L. 1978, ch. 154, § 3; L. 1984, ch. 313, § 57; L 2008, ch. 48, § 5; L. 2008, ch. 150, § 3; Oct. 1.

36-505. Renewal of licenses; application, form, fee; inspection; noncompliance, notice; remedial action; denial, hearing; failure to renew, restoration fee. Except as otherwise provided in this section, any license issued under the provisions of this act shall expire on December 31 of the year in which it is issued, and may be renewed by making application to the secretary on or before the expiration date. Application for renewal of a license shall be made on a form prescribed by the secretary and shall be accompanied by the license fee required for the issuance of an original license. Prior to the renewal of any such license, the secretary shall inspect or cause to be inspected the licensed premises or food vending machines which are to be operated and serviced under authority of a license issued under this act to determine the compliance of such premises with the applicable standards promulgated pursuant to this act. Lodging establishments shall not be required to be inspected prior to license renewal. If an inspection of the premises is required and such inspection is not made prior to the expiration date of the license sought to be renewed, such license shall be valid until the inspection has been made and the secretary has granted or denied the application for renewal. No license shall be renewed unless and until the licensed premises for which it is issued is found to be in compliance with the applicable standards promulgated pursuant to this act. A food vending machine dealer license shall be renewed without inspection. If the secretary shall refuse to renew any license, the secretary shall give written notice thereof to the licensee, specifying the changes or alterations necessary in the establishment to effect complete compliance with the applicable standards and stating that, if such compliance is effected within the period of time designated in the notice, the license shall be renewed. If the licensee fails to effect complete compliance with the applicable standards within the time prescribed in such notice, the application for renewal of a license shall be denied, and the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereon, if a written request therefor is filed with the secretary within 20 days of the date such notice is sent. Such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act. If, for any reason, a licensee fails to renew a license prior to the expiration date thereof, the licensee may obtain a renewal of such license within 30 days following the expiration date thereof, by complying with the foregoing provisions of this section and paying a restoration fee in the amount of $10.

History: L. 1975, ch. 314, § 9; L. 1984, ch. 313, § 58; L. 1993, ch. 196, § 2; July 1.

36-506. Rules and regulations establishing standards for lodging establishments. (a) The secretary of agriculture shall adopt rules and regulations establishing minimum standards for the safe and sanitary operation of lodging establishments. The lodging standards promulgated by such rules and regulations shall relate to:

(1) Water supply;

(2) heating;

(3) lighting;

(4) ventilation;

(5) toilet and other sanitary facilities;

(6) conditions increasing the hazards of fire, accidents or other calamities;

(7) bedding and furnishings;

(8) sewage disposal; and

(9) such other minimum conditions which the secretary deems necessary for the operation and maintenance of a lodging establishment in a safe and sanitary manner.

(b) The standards promulgated pursuant to the rules and regulations adopted hereunder shall be designed to ensure the health, comfort and safety of the guests in lodging establishments. Such standards may be based upon or incorporate by reference specific editions, or portions thereof, of nationally recognized codes establishing lodging standards. Such standards shall be applicable uniformly throughout the state, except that the secretary may establish different standards for each of the various classes of lodging establishments. Any provision of an ordinance or resolution of any municipality, prescribing safety and sanitation standards for lodging establishments, which does not conform to the minimum standards promulgated by the secretary pursuant to this section, shall be null and void; but nothing herein shall be construed as precluding any municipality from establishing by ordinance or resolution standards which are more stringent than those established by the secretary.

History: L. 1975, ch. 314, § 10; L 2008, ch. 84, § 14; Oct. 1.

36-507. Rules and regulations establishing standards for food service establishments and food vending machines. (a) The secretary of agriculture shall adopt rules and regulations establishing minimum standards for the safe and sanitary operation of food service establishments. The food service standards promulgated by such rules and regulations shall relate to:

(1) Preparation, sale, serving and storage of food;
(2) water supply;
(3) heating;
(4) lighting;
(5) ventilation;
(6) toilet and other sanitary facilities;
(7) conditions increasing the hazards of fire, accidents or other calamities;
(8) sewage disposal; and
(9) such other minimum conditions which the secretary deems necessary for the operation and maintenance of a food service establishment in a safe and sanitary manner.

(b) The standards promulgated pursuant to the rules and regulations adopted hereunder shall be designed to ensure the health, comfort and safety of the guests in food service establishments. Such standards may be based upon or incorporate by reference specific editions, or portions thereof, of nationally recognized codes establishing food service standards. Such standards shall be applicable uniformly throughout the state, and any provision of an ordinance or resolution of any municipality, prescribing safety and sanitation standards for food service establishments, which does not conform to the minimum standards promulgated by the secretary pursuant to this section, shall be null and void; but nothing herein shall be construed as precluding any municipality from establishing by ordinance or resolution food service standards which are more stringent than those established by the secretary: Provided, That no such ordinance or resolution shall be effective unless and until it has been approved by the secretary.

(c) In addition to the food service standards promulgated pursuant to this section, the secretary shall adopt rules and regulations establishing specific requirements for sanitary design, construction, location, servicing and operation of food vending machines. Such standards may be based upon, or may incorporate by reference, recommended vending sanitation codes of the United States public health service which are in existence on the effective date of this act.

History: L. 1975, ch. 314, § 11; L 2008, ch. 84, § 15; Oct. 1.

36-508. Annual inspections by secretary; noncompliance, notice; remedial action; suspension or revocation, hearing. The secretary shall inspect or cause to be inspected, at least once annually, every food service establishment in this state. For such inspections the secretary or the secretary's lawful agent shall have the right of entry and access thereto, at any reasonable time. Whenever, upon inspection, it shall be determined that any establishment does not comply with the applicable standards promulgated by the rules and regulations of the secretary, it shall be the duty of the secretary to give written notice to the owner, proprietor or agent in charge of such establishment of the changes or alterations necessary to effect a complete compliance with such standards. Such notice shall provide that the establishment shall be brought into compliance with the applicable standards within a period of time specified in the notice, which shall be not less than 10 days, except that a shorter period of time for compliance may be provided in the notice whenever the secretary believes it essential to protect the public health and safety. Such notice also shall state that if compliance with the applicable standards is not effected within the time prescribed, the license for such establishment shall be subject to suspension or revocation. The licensee of any establishment, for which a notice of noncompliance is given pursuant to this section, may apply to the secretary for an extension of the time prescribed in the notice for compliance with the applicable standards. Upon review of any such application, the secretary may grant or deny such application or modify the provisions of any such notice with respect to the time for compliance with any of the particulars stated therein. Upon reinspection of any establishment for which a notice of noncompliance has been issued pursuant to this section, if such establishment is found to be in noncompliance with the applicable standards promulgated pursuant to this act, the secretary may determine to suspend or revoke the license issued for such establishment. In such event, the secretary shall send written notice to the licensee that the license for such establishment will be suspended or revoked, effective 20 days after the date such notice is sent, unless within such time the licensee files with the secretary a written request for a hearing on the proposed suspension or revocation. All hearings pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

History: L. 1975, ch. 314, § 12; L. 1984, ch. 313, § 59; L. 1993, ch. 196, § 3; July 1.

36-509. Hearing; powers of secretary or hearing officer; procedure; affirmation, rescission or modification of order; appeal. (a) Whenever a timely request for a hearing shall be filed with the secretary pursuant to the provisions of this act the secretary shall set a time and place for such hearing which shall be held within not to exceed 20 days of the request therefor. Upon such hearing, the secretary or a presiding officer from the office of administrative hearings may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. At the hearing, the applicant shall have the right to be represented by counsel, to present witnesses and evidence in own behalf and to cross-examine adverse witnesses.

(b) Upon completion of the hearing, the secretary may affirm, rescind or modify the order denying, suspending or revoking the applicant's license. Any person aggrieved by any such decision of the secretary may appeal to the district court in the manner provided by the Kansas judicial review act.

History: L. 1975, ch. 314, § 13; L. 1984, ch. 313, § 60; L. 2004 ch. 145, § 12; July 1, 2005; amended 2010.

36-510. Enforcement of act by secretary; contracts providing for enforcement by municipalities, fire marshal or secretary of agriculture authorized; certain food service establishments licensed under other laws; compliance with standards required; delegation of enforcement; suspension or revocation of license; hearing. (a) The secretary shall be responsible for the enforcement of the lodging and food service standards promulgated pursuant to this act, but the secretary is hereby authorized and empowered to contract with the governing body of any municipality for the enforcement of all or any portion of such standards, whenever the secretary shall determine that such municipality has adequate personnel to provide proper enforcement. Any municipality entering into a contract with the secretary to enforce such standards shall act as an agent of the secretary in carrying out such duties, and no such municipality shall charge any lodging establishment or food service establishments a fee for services performed as an agent of the secretary under such contract which is in addition to and separate from any fee such establishment is required to pay to the secretary under the provisions of this act. Such municipality shall enforce such standards within such municipalities of this state as are designated in the contract. Any inspection of lodging or food service establishments by officers, employees or agents of any such municipality, and any notice of noncompliance issued as a result of any such inspection, shall have the same force and effect as if such had been done by the secretary.

(b) The secretary and the state fire marshal are hereby authorized and empowered to enter into a contract authorizing the state fire marshal and the fire marshal's deputies or lawful agents to enforce all or any portion of the lodging or food service standards promulgated pursuant to this act. Such contract shall designate specific lodging or food service establishments, or types of lodging or food service establishments, wherein such authority may be exercised. Any inspection of such establishments by the state fire marshal or the fire marshal's deputies or lawful agents, to determine compliance with lodging or food service standards established pursuant to this act, and any notice of noncompliance issued as a result of any such inspection, shall have the same force and effect as if such had been done by the secretary.

Such contract also may provide similar authority for the secretary of agriculture and the secretary's officers, employees and agents with respect to enforcement of all or any portion of the Kansas fire prevention code in specified lodging or food service establishments, or in types of lodging or food service establishments. Any inspection of such establishments by the secretary, or the secretary's officers, employees and agents, to determine compliance with the Kansas fire prevention code, shall have the same force and effect as if performed by the state fire marshal or the marshal's deputies and agents.

History: L. 1975, ch. 314, § 14; L. 1976, ch. 205, § 3; L. 1984, ch. 313, § 61; L 2008, ch. 84, § 16; Oct. 1; L. 2009, Ch. 59 § 6, July 1

36-511. Food vending machines; license required to operate or service; failure to obtain license or to comply with standards, sealing of machine; removal or breaking seal declared to be misdemeanor. No food vending machine shall be operated or serviced in this state except by a food vending machine company and under a license obtained therefor in accordance with the provisions of K.S.A. 36-504. Each food vending machine operated or serviced in this state without such a license or in a manner which is not in compliance with the applicable standards for food service promulgated pursuant to this act, shall be sealed by the secretary by placing appropriately labeled seals on each such machine so that it is then inoperable. It shall be unlawful for any person to remove such seal from a food vending machine, or otherwise break such seal such that the food vending machine is again operable, unless such removal or breaking is accomplished by specific authorization of the secretary upon placing such machine under authority of a valid license issued to a food vending machine company or correction of the noncomplying conditions of such machine by the food vending machine company licensed therefor. Such unlawful removal or breaking of a seal on a food vending machine under this section shall be a class C misdemeanor.

History: L. 1975, ch. 314, § 15; July 1.

36-512. Disposition of moneys; food service inspection reimbursement fund created. (a) The secretary shall remit all moneys received by the secretary under the provisions of this act to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Except for moneys remitted under subsection (b), upon receipt of each such remittance the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(b) The secretary shall remit all moneys received by the secretary from fees from food service establishments located in a municipality where food service inspection services are provided by a local agency under contract with the secretary to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the food service inspection reimbursement fund which is hereby created. On July 1, 1988, and on the first day of each month thereafter, the director of accounts and reports shall transfer from the food service inspection reimbursement fund to the state general fund an amount equal to 20% of all money credited to such fund during the preceding month. Expenditures from the food service inspection reimbursement fund shall be made to reimburse each local agency under contract with the secretary for food service inspection services in an amount equal to 80% of the money received from food service establishments in the municipality served by the local agency. All expenditures from the food service inspection reimbursement fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or a person designated by the secretary.

History: L. 1975, ch. 314, § 16; L. 1983, ch. 286, § 9; L. 1985, ch. 139, § 1; L. 1988, ch. 135, § 1; L. 2001, ch. 5, § 106; July 1.

36-513. Service of notice. Any written notice required to be issued by the secretary pursuant to this act, shall be served in accordance with the notice provisions of the Kansas administrative procedure act.

History: L. 1975, ch. 314, § 17; L. 1984, ch. 313, § 62; July 1, 1985.

36-515. Violation of standards; suspension or revocation of license; violation of act declared to be misdemeanor; injunctive relief. (a) After notice and opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act, the secretary may deny, suspend, revoke, refuse to renew or modify the license to operate a food service establishment, a lodging establishment or food vending machines if the licensee has:

(1) Failed to comply with the standards established pursuant to this act; or

(2) failed to comply with any provision or requirement of the Kansas food service and lodging act, and amendments thereto, or any rule or regulation adopted thereunder..

(b) Upon conviction, any person who violates any provision of this act shall be guilty of a class C misdemeanor, except that upon any subsequent conviction such person shall be guilty of a class B misdemeanor.

(c) The secretary may seek injunctive relief from the appropriate district court to enjoin any operator of a food service establishment, lodging establishment or food vending machine company from conducting business when such operator has failed to make application for or to obtain a license for such purpose as required by the food service and lodging act or when such license has been suspended or revoked.

History: L. 1975, ch. 314, § 19; L. 1982, ch. 181, § 2; July 1; L. 2009, Ch. 59 § 7, July 1.

36-515a. Temporary suspension of license without notice or hearing; limitations. (a) If the secretary finds that the public health or safety is endangered by the continued operation of a lodging establishment or food service establishment, the secretary may suspend temporarily the license of such establishment without notice or hearing in accordance with the emergency adjudication procedures of the provisions of the Kansas administrative procedure act.

(b) In no case shall a temporary suspension of a license under this section be in effect for a period of time in excess of 90 days. At the end of such period of time, the licensee shall be reinstated to full licensure unless the secretary has suspended or revoked the license, after notice and hearing, or the license has expired as otherwise provided under the food service and lodging act.

(c) This section shall be a part of and supplemental to the food service and lodging act.

History: L. 1982, ch. 181, § 4; L. 1984, ch. 313, § 63; July 1, 1985.

36-515b. Civil penalty for violation of act; procedure. (a) Any person who violates any provision of the food service and lodging act or any rule and regulation adopted pursuant thereto, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (b) in an amount not to exceed $500 for each violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) The secretary of agriculture, upon a finding that a person has violated any provision of the food service and lodging act or any rule and regulation adopted pursuant thereto, may impose a civil penalty within the limits provided in this section upon such person, which civil penalty shall be in an amount to constitute an actual and substantial economic deterrent to the violation for which the civil penalty is assessed.

(c) No civil penalty shall be imposed pursuant to this section except upon the written order of the secretary of agriculture to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to the secretary. Any such person, within 20 days after notification, may make written request to the secretary for a hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order of the director and shall specify the reasons therefor.

(d) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the Kansas judicial review act.

(e) Any penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(f) This section shall be a part of and supplemental to the food service and lodging act.

History: L. 1982, ch. 181, § 5; L. 1985, ch. 140, § 1; L. 2001, ch. 5, § 107; L 2008, ch. 84, § 17; Oct. 1; amended 2010.

36-515c. Citation of act. The provisions of K.S.A. 36-501 to 36-515, inclusive, and K.S.A. 36-515a to 36-515c, inclusive, and acts amendatory thereof or acts made specifically supplemental thereto shall be known and may be cited as the food service and lodging act.

History: L. 1982, ch. 181, § 6; July 1.

36-516. Gas stoves in public places, vents required; penalty for violation. (a) No person shall install or own any gas stove in any public building, resort, hotel, restaurant, tourist camp or other similar public place in this state unless such stove is properly connected with a chimney or other outlet or combination of outlets.

(b) Any violation of the provisions of this section is a class C misdemeanor.

History: L. 1977, ch. 147, § 1; July 1.

36-517. Lodging establishments; smoke detectors for deaf and hearing impaired. (a) Every licensed lodging establishment designated as a hotel shall provide at no additional charge to deaf and hearing impaired guests, upon request of such guests, portable smoke detectors of the type suitable for providing visual warning to such guests, or a room equipped with fixed visual warning smoke detectors or a ground floor guest room accessible to the out-of-doors. Each licensed lodging establishment designated as a hotel shall have available for such guests not less than one portable visual warning smoke detector, or one room equipped with a fixed visual warning smoke detector or one ground floor guest room accessible to the out-of-doors for each 50 guest rooms of such lodging establishment, except that no such lodging establishment designated as a hotel shall be required to have more than a total of six portable visual warning smoke detectors, or six rooms equipped with fixed visual warning smoke detectors or six ground floor guest rooms accessible to the out-of-doors nor shall any such lodging establishment have less than one such smoke detector, or one room equipped with a fixed visual warning smoke detector or one ground floor guest room accessible to the out-of-doors.

(b) This section shall be part of and supplemental to the food service and lodging act.

History: L. 1988, ch. 134, § 1; July 1, 1989.

36-518. (a) The secretary shall inspect or cause to be inspected every lodging establishment in this state. For such inspections the secretary or the secretary's lawful agent shall have the right of entry and access thereto, at any reasonable time.

(b) Whenever, upon inspection, it is determined that any lodging establishment does not comply with the applicable standards promulgated in the rules and regulations of the secretary, the secretary shall give written notice to the owner, proprietor or agent in charge of such establishment of the changes or alterations necessary to comply with such standards.

(1) The notice shall order the establishment to comply with the applicable standards within a period of time specified in the notice, which shall be not less than 10 days, except that a shorter period of time may be provided in the notice whenever the secretary believes it essential to protect the public health and safety.

(2) The notice also shall state that the license for such establishment shall be subject to suspension or revocation for failure to comply with the applicable standards within the time specified.

(3) The licensee of any establishment given a notice pursuant to this section may apply to the secretary for an extension of the time specified in the notice. The secretary shall review such application and may grant or deny such application or modify the provisions of the notice with respect to the time for compliance with any of the particulars stated in the notice.

(c) Upon reinspection of any lodging establishment given a notice pursuant to this section, if it is determined that such establishment does not comply with the applicable standards promulgated in the rules and regulations of the secretary, the secretary may suspend or revoke the license issued for such establishment. If the secretary suspends or revokes the license, the secretary shall send written notice to the licensee that the license for such establishment will be suspended or revoked, effective 20 days after the date such notice is sent, unless within such time the licensee files with the secretary a written request for a hearing on the proposed suspension or revocation. All hearings pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(d) The secretary is authorized to receive lodging inspection reports from qualified individuals, private entities or public entities to determine compliance with lodging standards promulgated pursuant to the food service and lodging act, and amendments thereto. The secretary is authorized to promulgate such rules and regulations as are necessary to receive such inspection reports. Such rules and regulations shall be promulgated on or before July 1, 2010.

(e) This section shall be a part of and supplemental to the food service and lodging act.

History: L. 2009, Ch. 59 § 1, July 1.

36-519. (a) If the secretary determines after notice and opportunity for a hearing that any person has engaged in or is engaging in any act or practice constituting a violation of any provision of the food service and lodging act, and amendments thereto, or any rules and regulations or order issued thereunder, the secretary may require that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the secretary will carry out the purposes of the violated or potentially violated provision of this act or rules and regulations or order issued thereunder. Any such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act.

(b) This section shall be a part of and supplemental to the food service and lodging act.

History: L. 2009, Ch. 59 § 2, July 1.

KANSAS ADMINISTRATIVE REGULATIONS

Kansas Department of Agriculture
Article 27. – Lodging Establishments

K.A.R. 4-27-1. Lodging establishment application fees. The application fee for each lodging establishment doing business in Kansas shall be based on the number of rooms as follows:

(a) 1 room through 9 rooms: $30;

(b) 10 rooms through 29 rooms: $50; and

(c) 30 rooms or more: $100. (Authorized by K.S.A. 2008 Supp. 36-506; implementing K.S.A. 2008 Supp. 36-502; effective June 4, 2010.)

K.A.R. 4-27-2. Definitions. Each of the following terms as used in K.A.R. 4-27-2 through K.A.R. 4-27-21 shall have the meaning assigned in this regulation. (a) "Bathhouse" means a room provided to guests, including a locker room, shower room, or other similar room, where guests can shower, store personal items, or change into appropriate clothing for use in the spa.

(b) "Bed and breakfast home" means a boarding house that is a private residence where the owner or manager resides and provides lodging and meals for guests. Any licensee operating a bed and breakfast home may serve food only to the licensee's overnight guests, unless the licensee obtains a food service license.

(c) "Boarding house" has the meaning specified in K.S.A. 36-501, and amendments thereto.

(d) "Egress" means an exit or route leading out of a lodging establishment.

(e) "Extended-stay establishment" means a lodging establishment in which a room is rented or leased to transient guests. Housekeeping functions are not provided on a daily basis.

(f) "Hotel" has the meaning specified in K.S.A. 36-501, and amendments thereto.

(g) "Hot tub" means a pool or container of water designated for recreational use in which one or more people can soak. A hot tub can use hydrojet circulation or an air induction system, or a combination of these, to provide water circulation. A hot tub can use various water temperatures and additives, including minerals and oils, to provide therapy or relaxation.

(h) "KDA" means Kansas department of agriculture.

(i) "Kitchenette" means a compact kitchen with cooking utensils, tableware, refrigerator, microwave, stove, or sink or any combination of these.

(j) "Licensee" means a person who is responsible for the operation of the lodging establishment and possesses a valid license to operate a lodging establishment.

(k) "Linens" means the cloth items used in the lodging establishment, including sheets, bedspreads, blankets, pillowcases, mattress pads, towels, and washcloths.

(l) "Lodge" means a boarding house or a rooming house that provides seasonal lodging for recreational purposes. If meals are provided for overnight guests, the lodge is operating as a boarding house. If meals are not provided for overnight guests, the lodge is operating as a rooming house.

(m) "Lodging establishment" has the meaning specified in K.S.A. 36-501, and amendments thereto.

(n) "Major renovation" means a physical change to a lodging establishment or portion of a lodging establishment, including the following:

(1) Replacing or upgrading any of the following types of major systems:

(A) Electrical;

(B) plumbing;

(C) heating, ventilation, and air-conditioning;

(2) demolition of the interior or exterior of a building or portion of the building; and

(3) replacement, demolition, or installation of interior walls and partitions, whether fixed or moveable.

Major renovation shall not include replacement of broken, dated, or worn equipment and other items, including individual air-conditioning units, bathroom tiles, shower stalls, and any other items that do not require additional or new plumbing or electrical repairs.

(o) "Municipality" has the meaning specified in K.S.A. 36-501, and amendments thereto.

(p) "Person" has the meaning specified in K.S.A. 36-501, and amendments thereto.

(q) "Person in charge" means the individual or employee who is present in the lodging establishment at the time of the inspection and who is responsible for the operation. If no designated individual or employee is the person in

charge, then any employee present is the person in charge.

(r) "Recreational water facility" and "RWF" mean a water environment with design and operational features that provides guests with recreational activity and that involves immersion of the body partially or totally in the water. This term shall include water slides, watercourse rides, water activity pools, jetted pools, and wave pools. This term shall not include swimming pools and hot tubs.

(s) "Regulatory authority" means the secretary of the department of agriculture or the secretary's designee.

(t) "Rooming house" has the meaning specified in K.S.A. 36-501, and amendments thereto.

(u) "Sanitize" means to apply cumulative heat or chemicals on any clean surface so that, when evaluated for efficacy, the surface yields a reduction of 99.999% of disease-causing microorganisms.

(v) "Secretary" has the meaning specified in K.S.A. 36-501, and amendments thereto.

(w) "Single-service articles" means items that are designed, constructed, and intended for one-time use and for one person's use, after which the item is discarded. This term shall include plastic, paper, or foam tableware and utensils, lightweight metal foil, stirrers, straws, toothpicks, and other items including single-use gloves, bags, liners, containers, placemats, and wrappers.

(x) "Spa" means any area of a lodging establishment where a hot tub, swimming pool, fitness equipment, tanning bed, or similar guest amenities are located. (Authorized by K.S.A. 2008 Supp. 36-506; implementing K.S.A. 2008 Supp. 36-501 and 36-506; effective June 4, 2010.)

K.A.R. 4-27-3. Licensure; plans and specifications; variances. (a) Each person applying for a license to operate a lodging establishment shall submit the following to the secretary:

(1) A completed application and the required application and license fees; and

(2) if required by subsection (b), the plans and specifications of the lodging establishment.

(b) The plans and specifications shall be submitted before any of the following:

(1) The construction of a lodging establishment;

(2) the conversion of an existing structure for use as a lodging establishment;

(3) the major renovation of a lodging establishment;

(4) the addition or major renovation of a swimming pool, hot tub, RWF, or spa; or

(5) the addition or change of a food service operation within a lodging establishment.

(c) Each plan and specification for a lodging establishment shall demonstrate conformance with the applicable requirements of these regulations and shall include the following:

(1) The proposed layout, mechanical schematics, construction materials, and completion schedules;

(2) the equipment layout, construction materials, and completion schedules for any food preparation and service area; and

(3) the equipment layout and completion schedules for each swimming pool, hot tub, RWF, and spa.

(d) A variance may be granted by the regulatory authority to modify or waive one or more requirements of a regulation if the regulatory authority determines that a health hazard, safety hazard, or nuisance will not result from the variance.

(1) Each person requesting a variance shall submit the following to the department:

(A) A written statement of the proposed variance of the regulatory requirement;

(B) documentation of how the proposed variance addresses public health hazards and guest safety at the same level of protection as that of the original requirement; and

(C) any other relevant information if required by the secretary.

(2) For each variance granted, the licensee shall meet the following requirements:

(A) Follow the plans and procedures approved by the regulatory authority;

(B) maintain a permanent record of the variance at the lodging establishment; and

(C) maintain and provide to the regulatory authority, upon request, records that demonstrate that the variance is being followed. (Authorized by K.S.A. 2008 Supp. 36-506; implementing K.S.A. 2008 Supp. 36-502; effective June 4, 2010.)

K.A.R. 4-27-4. Food service and food safety. Each licensee that serves food shall comply with one of the following provisions: (a) Each licensee, if serving food to the general public, shall be required to obtain a food service license in accordance with K.S.A. 36-501 et seq., and amendments thereto, and comply with all applicable standards adopted in K.A.R. 4-28-8 through K.A.R. 4-28-16.

(b) A licensee that provides only complimentary food service to only that establishment's overnight guests shall not be required to purchase a separate food service license. This food service shall meet all applicable standards adopted in K.A.R. 4-28-8 through K.A.R. 4-28-16.

(c) Any licensee of a boarding house who does not have a food service license as specified in K.S.A. 36-501 et seq., and amendments thereto, may serve food only to the overnight guests. The licensee of each boarding house shall comply with all applicable standards adopted in K.A.R. 4-28-8 through K.A.R. 4-28-16. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

K.A.R. 4-27-5. Imminent health hazard. (a) Each licensee shall discontinue operations of the affected portions of the lodging establishment on discovery that an imminent health hazard exists.

"Imminent health hazard" shall include fire, flood, sewage backup, rodent infestation, bed bug or other insect infestation, misuse of poisonous or toxic materials, gross unsanitary occurrence or condition, or any other condition that could endanger the health and safety of guests, employees, and the general public.

(b) Each licensee shall notify the regulatory authority within 12 hours of the discovery of an imminent health hazard. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

K.A.R. 4-27-6. General requirements. (a) Each licensee shall meet all of the following requirements:

(1) Post the license in a location in the lodging establishment that is conspicuous to guests;

(2) comply with the provisions of these regulations, including the conditions of any granted variance;

(3) ensure that no room or any portion of the lodging establishment is rented unless the room or portion of the lodging establishment is safe and sanitary; and

(4) replace any existing items, including equipment, furnishings, fixtures, or items of décor, with items that meet the requirements of these regulations, under any of the following conditions:

(A) The items constitute a public health hazard;

(B) the items affect guest safety; or

(C) the items do not meet the requirements of these regulations.

(b) Each licensee shall ensure that the hot water capacity is sufficient to meet the hot water demands of the lodging establishment.

(c) Each licensee shall ensure that all handwashing sinks meet all of the following requirements:

(1) Hot and cold potable water shall be supplied under pressure to each sink in enough capacity to meet handwashing needs.

(2) A mixing valve or combination faucet shall be used, unless the lodging establishment is listed on the state historical register or a variance that alters this requirement has been granted.

(3) The temperature of the hot water shall be at least 100 degrees Fahrenheit. If a mixing valve or combination faucet is not used, the temperature of the hot water shall not exceed 130 degrees Fahrenheit.

(4) A supply of hand soap and either paper towels or an electric drying device shall be available at all times at the handwashing sink.

(d) In public areas, cloth towels may be provided for one-time use by an individual. A receptacle for the soiled cloth towels shall be provided.

(e) The use of a common cloth towel shall be prohibited, except in guest rooms.

(f) A handwashing reminder sign shall be posted in each handwashing area, except in guest rooms.

(g)(1) A toilet room that is accessible at all times to employees shall be provided. A public toilet room may be used by employees in lieu of a separate employee toilet room.

(2) A public toilet room or rooms shall be provided and accessible to the public if the lodging establishment provides space for guest or public gatherings or functions, including conferences, meetings, seminars, receptions, teas, dances, recitals, weddings, parties, wakes, and other events.

(3) There shall be at least one handwashing sink in or immediately adjacent to each toilet room. Each sink shall meet the requirements specified in subsection (c).

(4) Each toilet and urinal shall be sanitary, maintained in good repair, and operational at all times.

(5) Each toilet and urinal shall be cleaned and sanitized daily or more often if visibly soiled.

(6) The floor in each toilet room shall be constructed of smooth, nonabsorbent, easily cleanable materials and maintained in good repair. Carpeting shall be prohibited as a floor covering in toilet rooms.

(7) Except as specified in this paragraph, the storage of items in any toilet room shall be prohibited. A small amount of commonly used toilet room supplies may be stored, including toilet paper, hand soap, and paper towels. (Authorized by K.S.A. 2008 Supp. 36-506; implementing K.S.A. 2008 Supp. 36-502 and 36-506; effective June 4, 2010.)

K.A.R. 4-27-7. Personnel; health, cleanliness, and clothing. Each licensee shall ensure that all of the following requirements are met: (a) Health of employees. Each employee with any of the following health problems shall be excluded from a lodging establishment:

(1) The employee is infected with a communicable disease, and the disease can be transmitted to other employees or guests in the normal course of employment.

(2) The employee is a carrier of organisms that cause a communicable disease.

(3) The employee has a boil, an infected wound, or an acute respiratory infection.

(b) Cleanliness of employees.

(1) Each employee shall wash that employee's hands in accordance with paragraph (b)(2) before handling clean utensils or dishware, ice, beverages, food, or clean laundry.

(2) Each employee shall wash that employee's hands and any exposed portions of that employee's arms with soap and water in a designated sink by vigorously rubbing together the surfaces of the lathered hands and arms for 15 seconds to 20 seconds and thoroughly rinsing with clean water.

(c) Clothing. Each employee providing services directly to guests or performing housekeeping functions shall wear clean outer clothing that is in good repair. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

K.A.R. 4-27-8. Guest and public safety. (a) If the regulatory authority has reason to believe that defects could be present with regard to the integrity of the structure or electrical system of the lodging establishment, that authority may require the licensee to retain the services of a professional engineer or local building code officer to certify the lodging establishment for building safety. Disasters after which the structural integrity may need to be evaluated shall include a heavy snow or ice storm, flood, tornado, straight-line winds, fire, hurricane, and earthquake.

(b) Each licensee shall ensure that all repairs, construction, renovations, and maintenance are conducted in a manner that provides safe conditions for the guests and the public.

(c) The licensee of each lodging establishment using fuel-fired equipment or appliances that pose a potential carbon monoxide risk, including lodging establishments with attached parking garages or wood-burning fireplaces, shall install one or more carbon monoxide detectors according to the manufacturer's specifications.

(1) A carbon monoxide detector shall be required in each non-guest room adjoining or sharing a common ventilation system with an attached parking garage.

(2) Each carbon monoxide detector shall be in working condition.

(A) Each carbon monoxide detector shall be tested at least every six months to ensure that the detector is operating properly. The batteries shall be changed, as needed.

(B) A 12-month history of all test results shall be logged and maintained at the lodging establishment and made available to the regulatory authority upon request.

(C) If a battery-operated detector is not operational for two consecutive tests, the licensee shall install a detector that is hardwired with a battery backup.

(3) A carbon monoxide detector shall not be required to be installed in an attached parking garage area.

(d) The operation and maintenance requirements for each lodging establishment shall include all of the following:

(1) Each lodging establishment shall meet the requirements of all applicable building codes, fire codes, and ordinances.

(2) No freshly cut Christmas trees or boughs shall be used unless the freshly cut trees or boughs are treated with a flame-resistant material. The documentation of the treatment shall be kept on file at the lodging establishment for at least one year.

(3) Textile materials having a napped, tufted, looped, woven, nonwoven, or similar surface shall not be applied to walls or ceilings, unless the textile materials are treated with a flame-resistant material. The documentation of the treatment shall be kept on file at the lodging establishment for as long as the materials are used on the walls or ceilings. This documentation shall be made available to the regulatory authority upon request. Carpeting used as coving that covers the junction between the floor and walls shall be exempt from this requirement.

(4) Foam or plastic materials or other highly flammable or toxic material shall not be used as an interior wall, ceiling, or floor finish unless approved by the regulatory authority.

(5) The doors in any public areas that lead outside the lodging establishment shall not be locked or blocked, preventing egress when the building is occupied. No exit doors shall be concealed or obscured by hangings, draperies, or any other objects.

(6)(A) Portable fire extinguishers shall be required and located in the hallways, mechanical rooms, laundry areas and all other hazardous areas and within 75 feet of each guest room door. All portable fire extinguishers shall be easily accessible to the guests and employees.

(B) Each fire extinguisher shall meet the following requirements:

(i) Be maintained in a fully charged and operable condition;

(ii) be rated at least 2A-10BC;

(iii) contain at least five pounds of fire suppressant; and

(iv) be inspected annually by a fire extinguisher company, a fire department representative, or another entity approved by the regulatory authority. The licensee shall retain a record of these inspections at the lodging establishment for at least one year.

(7) Emergency lighting shall be provided where guest room doors open to an interior corridor and where guest room doors open to the outside but not directly at ground level.

(8) A smoke detector shall be installed in each guest sleeping room, cooking area and kitchen, interior stairwell, hallway, laundry area, mechanical room, and any other fire hazard area. Any heat-sensing device designed to detect fire may be installed in a cooking area in lieu of a smoke detector.

(A) All smoke detectors and heat-sensing devices shall be maintained in operating condition.

(B) Each smoke detector and each heat-sensing device shall be tested at least every six months to ensure that the detector or device is operating properly. The batteries shall be replaced as needed.

(C) A 12-month history of test results shall be logged and maintained at the lodging establishment and made available to the regulatory authority upon request.

(D) If a battery-operated detector is not operational for two consecutive tests, the licensee shall install a detector that is hardwired with a battery backup.

(E) Smoke detectors for hearing-impaired individuals shall be available as specified in K.S.A. 36-517, and amendments thereto.

(9) If hardwired, interconnected smoke detectors are used, these detectors shall be tested and approved annually by a fire sprinkler company, fire alarm company, fire department representative, or any other entity approved by the regulatory authority. A 12-month history of test results shall be maintained at the lodging establishment and made available to the regulatory authority upon request.

(10) If fire alarm systems and fire sprinkler systems are used, the systems shall be tested and approved annually by a fire alarm company, fire sprinkler company, fire department representative, or any other entity approved by the regulatory authority. A 12-month history of test results shall be maintained at the lodging establishment and made available to the regulatory authority upon request.

(11)(A) All exit signs shall be clean and legible. At least one exit sign shall be visible from each of the following locations:

(i) The doorway of each guest room that opens to an interior corridor; and

(ii) the doorway of each guest room that opens to the outdoors but not directly at ground level.

(B) Each newly constructed lodging establishment shall have supplemental directional signs indicating the direction and path of egress.

(C) Boarding houses and rooming houses shall not be required to have exit signs if the requirements in paragraphs (d)(5) and (12) are met.

(12) An evacuation route diagram shall be posted in a conspicuous location in each guest room. The diagram shall include the location of the guest room, the layout of the floor, and the location of the nearest available exits. If the door of a guest room opens directly to the outdoors at ground level, the diagram shall not be required to be posted.

(13) A copy of an emergency management plan and employee instructions shall be kept on file in the lodging establishment, made accessible to all employees, and made available to the regulatory authority upon request. A record that each employee has received training on the emergency management plan shall be maintained at the lodging establishment in each employee's file. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

K.A.R. 4-27-9. Guest rooms. Each licensee shall ensure that each guest room is kept clean, is in good repair, and is maintained with regard to the health and safety of each guest, in accordance with all of the following requirements:

(a) The walls, floors, ceilings, doors, and windows shall be constructed of materials intended for that purpose, maintained in good repair, and cleaned, painted, or replaced as necessary.

(1) All junctures between floors and walls shall be constructed, covered, or finished with a baseboard and readily cleanable.

(2) All floors and floor coverings shall be cleaned as needed. The methods for cleaning shall be suitable to the finish and material.

(3) All floor maintenance, repair, or replacement shall be done in a manner that prevents slipping or tripping hazards to any guest.

(4) A guest room that has visible mold on the floors, walls, ceiling, or windows shall not be rented until mold cleanup is completed.

(b) All furnishings, including draperies, beds, appliances, furniture, lamps, and decorative items, shall be kept clean and in good repair. The methods for cleaning shall be suitable to the material and finish.

(c) Each guest room shall have a connecting toilet room and bathing facilities, including a bathtub or shower, except for the following:

(1) If the lodging establishment is listed on the state historical register and documentation is provided to the regulatory authority, at least one toilet room with bathing facilities located on the same floor shall be provided for every two guest rooms, unless otherwise specified by the regulatory authority.

(2) If the lodging establishment is a boarding house, including a bed and breakfast home, or a rooming house, at least one toilet room with bathing facilities located on the same floor shall be provided for every two guest rooms.

(3) If the lodging establishment is a lodge with dormitory sleeping areas, at least one toilet and at least one bathtub or one shower shall be provided for every six guests and shall be located within the same building as the dormitory sleeping area or adjacent to the dormitory sleeping area.

(d) Each handwashing sink shall meet the requirements specified in K.A.R. 4-27-6.

(e) Each rented guest room shall be serviced daily in the following manner except as otherwise specified in this subsection:

(1) Clean bathroom linens, including towels and washcloths, shall be provided. If bathmats are provided, the bathmats shall be clean.

(2) Clean bed linens shall be provided, and the bed shall be made.

(3) All floors shall be swept or vacuumed, if visibly soiled. All hard-surface floors shall be wet-cleaned if visibly soiled.

(4) Each toilet, sink, bathtub, and shower area shall be cleaned if visibly soiled.

(5) Each trash container shall be emptied and shall be cleaned if visibly soiled. A trash container liner may be reused during the same guest's stay if the liner is not visibly soiled.

(6) All soap and prepackaged guest toiletry items shall be replenished, as necessary.

(7) All toilet paper shall be replenished, as necessary.

(8) Clean ice bucket liners shall be provided and replaced, as necessary and upon request of the guest.

(9) All glassware and cups, if provided, shall be replaced with clean and sanitized dishware. Single-service cups, if provided, shall be replenished.

(10) If a coffeemaker is present in the guest room, the coffeepot shall be rinsed. If the coffeepot is visibly soiled or contaminated, it shall be washed, rinsed, and sanitized. A fresh supply of coffee, condiments, and any single-service articles shall be replenished, if provided.

(f) Each guest room shall be serviced daily during the guest's stay if the stay is less than five days, unless the guest requests that all or part of the room not be serviced.

(g) If the same guest continuously occupies the same room for five or more days, the room shall be serviced and cleaned at least every five days. For each extended-stay establishment, the guest room shall be serviced and cleaned at least every five days.

(h) Each guest room that is available for rent shall be serviced and cleaned before each new guest. In addition to the required service activities in subsection (e), each guest room cleaning shall include the following:

(1) All floors shall be swept or vacuumed, and all hard-surface floors shall be wet-cleaned.

(2) All furniture, fixtures, and any items of decoration shall be cleaned in a manner that is appropriate to the finish.

(3) The interior of all drawers shall be cleaned.

(4) All toilets, sinks, bathtubs, and shower areas shall be cleaned and sanitized in a manner that is appropriate to the finish.

(5) All sinks, bathtubs, and shower areas shall be kept free of hair, mold, and mildew.

(6) Bed linens and bath linens shall not be used for cleaning or dusting.

(7) All trash containers shall be emptied and cleaned, and new liners shall be provided.

(8) All ice bucket liners shall be replaced with new liners.

(9) All used guest toiletries and soap shall be replenished.

(10) The guest room shall be visually inspected for any evidence of insects, rodents, and other pests.

(i)(1) All bedspreads, top-covering linens, blankets, mattress pads, mattresses, and box springs shall be cleaned and maintained in good repair according to all of the following requirements:

(A) All linens with tears or holes shall be repaired or replaced, and all soiled and stained linen shall be cleaned.

(B) All bedspreads and top-covering linens shall be cleaned at least monthly.

(C) All blankets and mattress pads shall be cleaned at least monthly. All blankets and mattress pads that are visibly soiled or stained shall be removed and replaced with clean linen.

(D) All mattresses and box springs shall be kept clean. Each damaged or soiled mattress and box spring shall be repaired or cleaned.

(E) Each mattress that is not kept in sanitary condition shall be replaced.

(2) The interior and surface of each enclosed mattress platform shall be cleaned if visibly soiled and either maintained in good repair or replaced.

(j) The requirements of one of the following paragraphs shall be met:

(1) No coffeemaker or coffeepot shall be located within a toilet room. Each coffeepot shall be rinsed before each new guest.

(2) Each coffeepot located within a toilet room shall be washed, rinsed, and sanitized before each new guest as specified in K.A.R. 4-27-10.

(k) All single-service drinking glasses and utensils shall be prepackaged.

(l) All food and condiments provided in each guest room shall be individually prepackaged.

(m) If a refrigerator unit is provided in a guest room, the unit shall be cleaned before each new guest.

(n) Each appliance provided for guest use, including microwaves, stoves, dishwashing machines, coffeemakers, hair dryers, clothing irons, radios, televisions, remote controls, and video equipment, shall be operational and in good repair. All cooking appliances, including microwaves and stoves, shall be cleaned before each new guest. All appliances shall be listed with or certified by underwriters' laboratories (UL) and shall bear the UL designation.

(o) Except as specified in this subsection, the use of portable electrical or open-flame cooking devices shall be prohibited in a guest room. These devices shall include hot plates, electric skillets and grills, propane and charcoal grills, camping stoves, and any similar cooking devices. These devices shall not include slow cookers. Microwaves and toasters that are provided in a guest room by the licensee shall be permitted.

(p) Each guest room shall be free of any evidence of insects, rodents, and other pests.

(1) If a guest room has been vacant for at least 30 days, the licensee shall visually inspect that room for any evidence of insects, rodents, and other pests within 24 hours of occupancy by the next guest.

(2) No guest room that is infested by insects, rodents, or other pests shall be rented until the infestation is eliminated.

(3) The presence of bed bugs, which is indicated by observation of a living or dead bed bug, bed bug carapace, eggs or egg casings, or the typical brownish or blood spotting on linens, mattresses, or furniture, shall be considered an infestation.

(4) The presence of bed bugs shall be reported to the regulatory authority within one business day upon discovery or upon receipt of a guest complaint.

(5) All infestations shall be treated by a licensed pest control operator (PCO).

(6) All pest control measures, both mechanical and chemical, shall be used in accordance with the manufacturer's recommendations.

(7) No rodenticides, pesticides, or insecticides shall be stored in a guest room or in any area that could contaminate guest supplies, food, condiments, dishware, or utensils.

(q)(1) The licensee of each lodging establishment that allows pets into any guest room shall advise consumers that the establishment is "pet-friendly" by posting a sign in a conspicuous place at the front desk to alert guests that pets are allowed.

(2) The licensee of each lodging establishment where pets or service animals have been in a guest room shall meet one of the following requirements:

(A) The guest room shall be deep cleaned before the next guest. Deep cleaning shall include servicing and cleaning the guest room as specified in subsections (e) and (h), as well as vacuuming and shampooing the carpet and upholstered furnishings and vacuuming the mattress. All bed linens, including sheets, mattress pads, blankets, bedspreads or top coverings, and pillows, shall be replaced with clean bed linens.

(B) If the room is not deep cleaned, the licensee shall not offer that room to any guest without giving notification to that guest that a pet or service animal was in the room previous to the new guest.

(3) If the previous guest has smoked in a room, the licensee of any lodging establishment shall not offer that room as a non-smoking room until one of the following requirements is met:

(A) The guest room is deep cleaned as specified in paragraph (q)(2)(A).

(B) If the room is not deep cleaned, the licensee shall give notification to the new guest that the previous guest smoked in the room.

(r) Each guest room shall be provided with a means for locking each entrance both from the inside and from the outside, according to all of the following requirements:

(1) The key furnished to each guest shall not unlock the door to any other guest room.

(2) At least one secondary lock, including a dead bolt lock, thumb bolt, chain lock, or a similar device, shall be provided in addition to the primary key lock and shall be installed in accordance with the manufacturer's specifications.

(3) All locks shall be in good repair and fully operational.

(s) Each pair of connecting guest rooms shall have two doors in the connecting doorway. Each connecting door shall be equipped with a lock on only the guest room side of that door.

(t) If cribs are provided upon request, the cribs shall be easily cleanable, safe, and in good repair. Each crib rail, pad, and mattress shall be cleaned and sanitized after each guest. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

K.A.R. 4-27-10. Dishware and utensils. Each licensee shall ensure that all of the following requirements are met:

(a) General.

(1) All dishware and utensils that are designed for repeat use shall be made of safe, durable, and nonabsorbent material and shall be kept in good repair. No cracked or chipped dishware or utensils shall be provided for use by guests or employees.

(2) All single-service articles shall be constructed of safe, durable, and nonabsorbent materials.

(3) All single-service drinking glasses and utensils shall be prepackaged or protected in a dispenser.

(4) No single-service articles may be reused.

(b) Storage.

(1) All clean dishware and utensils and all single-service articles shall be protected from dirt, dust, liquids, insects, vermin, and any other sources of contamination at all times.

(2) Each licensee shall provide storage facilities for dishware and utensils in a clean, dry location at least six inches above the floor.

(3) No dishware and utensils shall be stored under an exposed sewer line or a dripping water line.

(4) No dishware, utensils, single-service articles, ice buckets, and food containers shall be stored within a toilet room.

(c) Cleaning and sanitization. Each licensee shall use either manual cleaning and sanitizing equipment or mechanical cleaning and sanitizing equipment.

(1) All dirty or used glasses, dishware, and utensils that are in areas other than a guest room kitchenette shall be removed from each guest room during the servicing or cleaning of the room and upon vacancy of that room. All items shall be washed, rinsed, and sanitized using one of the approved methods in this regulation.

(2) If the licensee provides repeat service dishware or utensils to the lodging establishment's guests or to the public, the licensee shall install in the lodging establishment, or in a food service area operated in conjunction with the lodging establishment, manual or mechanical cleaning equipment for dishware and utensils that meets the requirement of this regulation.

(3) The manual cleaning and sanitizing of dishware, utensils, and food equipment shall meet all of the following requirements:

(A)(i) A sink with at least three compartments or three adjacent sinks shall be used and shall be large enough to permit the immersion of the largest item of dishware, utensil, or food equipment articles to be cleaned.

(ii) All sinks and dishware drying surfaces shall be cleaned before use.

(B) Each compartment of the sink shall be supplied with hot and cold potable running water.

(C) The wash, rinse, and sanitizing water shall be kept clean.

(D) The steps for manual cleaning and sanitizing shall consist of all of the following:

(i) All dishware, utensils, and food equipment shall be thoroughly washed in the first compartment with a hot detergent solution.

(ii) All dishware, utensils, and food equipment shall be rinsed free of detergent and abrasives with clean water in the second compartment.

(iii) All dishware, utensils, and food equipment shall be sanitized in the third compartment according to one of the methods in paragraph (c)(3)(E).

(E) The food contact surfaces of all dishware, utensils, and food equipment shall be sanitized during manual ware washing by one of the following methods:

(i) Immersion for at least 10 seconds in a clean solution containing 50 to 200 parts per million of available chlorine, with a water temperature of at least 75 degrees Fahrenheit;

(ii) immersion for at least 30 seconds in clean hot water with a temperature of at least 171 degrees Fahrenheit;

(iii) immersion in a clean solution containing a quaternary ammonium compound with a minimum water temperature of 75 degrees Fahrenheit and with the concentration indicated by the manufacturer's directions on the label; or

(iv) immersion in a clean solution containing a sanitization chemical other than those specified in this

subsection that meets the applicable requirements specified in K.A.R. 4-28-11.

(F) A chemical test kit, thermometer, or other device that accurately measures the concentration of sanitizing chemicals, in parts per million, and the temperature of the water shall be available and used daily.

(4) The mechanical cleaning and sanitizing of dishware, utensils, and food equipment may be done by spray-type or immersion commercial dishwashing machines. Another type of dishwashing machine or device may be used if the machine or device meets the requirements of this regulation.

(A) Each dishwashing machine and device shall be properly installed and maintained in good repair and shall be operated in accordance with the manufacturer's instructions.

(B) If an automatic detergent dispenser, rinsing agents dispenser, or liquid sanitizer dispenser is used, the dispenser shall be properly installed and maintained.

(C) Each dishwashing machine using hot water to sanitize shall be installed and operated according to the manufacturer's specifications and shall achieve a minimum dishware and utensil surface temperature of 160 degrees Fahrenheit as measured by a dishwasher-safe thermometer. For each dishwashing machine using hot water to sanitize that does not cause the surface temperature of the dishware and utensils to reach a temperature of 160 degrees Fahrenheit, one of the following requirements shall be met:

(i) The licensee shall install a heat booster.

(ii) The licensee shall provide the regulatory authority with documentation of a time and temperature relationship that results in the sanitization of the dishware and utensils.

(D) The final rinse temperature of each dishwashing machine using hot water to sanitize shall be monitored by a dishwasher-safe thermometer.

(E) All dishware, utensils, and food equipment shall be exposed to all dishwashing and drying cycles.

(F) Each dishwashing machine using chemicals for sanitization shall be used as follows:

(i) The temperature of the wash water shall be at least 120 degrees Fahrenheit, and the chemical sanitizing rinse water shall be at least 75 degrees Fahrenheit unless specified differently by the machine's manufacturer.

(ii) The wash water shall be kept clean.

(iii) The chemicals added for sanitization purposes shall be automatically dispensed.

(iv) All dishware, utensils, and food equipment shall be exposed to the final chemical sanitizing rinse in accordance with the manufacturer's specifications for time and concentration.

(v) All chemical sanitizers shall meet the applicable requirements of K.A.R. 4-28-11.

(G) A chemical test kit, thermometer, or other device that accurately measures the concentration of sanitizing chemicals, in parts per million, and the temperature of the water shall be available and used daily.

(H) Each dishwashing machine or device shall be cleaned as often as necessary to be maintained in operating condition according to the manufacturer's specifications.

(d) All dishware, utensils, and food equipment shall be air-dried.

(e) Each licensee that provides dishware, utensils, and food equipment in the guest room shall clean and sanitize the dishware, utensils, and food equipment provided by one of the following methods:

(1) Provide manual dishwashing and sanitizing as specified in paragraph (c)(3);

(2) provide a mechanical dishwashing machine as specified in paragraph (c)(4); or

(3) provide a complete set of clean and sanitized dishware, utensils, and food equipment before each new guest arrives. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

K.A.R. 4-27-11. Housekeeping and laundry facilities; maintenance supplies and equipment. Each licensee shall ensure that all housekeeping and laundry facilities and equipment are clean and maintained in good repair. Each licensee shall ensure that all of the following requirements are met: (a)(1) Each housekeeping cart shall be maintained and operated to prevent the contamination of clean linens by dirty linens.

(2) Each housekeeping cart shall be designed, maintained, and operated to protect clean glasses, utensils, dishware, single-service articles, food, coffee, and condiments from dirty linens and other sources of contamination, including dirty glasses and dishware, cleaning and sanitizing agents, and poisonous or toxic materials.

(3) Each service or utility cart shall be maintained and operated to prevent the contamination of clean linens by dirty linens or other sources of contamination, according to one of the following methods:

(A) Cleaning and sanitizing the service cart before transporting clean linens;

(B) lining the service cart with a clean liner before transporting clean linens;

(C) placing the clean linens in a clean container before transporting the linens in the service cart; or

(D) using another method as approved by the regulatory authority.

(4) All laundry bags used for dirty linen shall be laundered before being used for clean linen.

(5) Each housekeeping cart and each service cart shall be kept clean and in good repair.

(b)(1) Each licensee shall provide laundry facilities, unless a commercial laundry service is used.

(2) All clean laundry shall be handled in a manner that prevents contact with dirty linen.

(3) Each laundry area shall be designed and arranged in a manner that provides for the functional separation of clean and dirty laundry. A space large enough for sorting and storing soiled linens and for sorting and storing clean linens shall be provided.

(4) The laundry facilities shall be located in areas that are not used by guests or the public and are not used as corridors or passageways.

(5) The laundry area shall be kept clean and free from accumulated lint and dust.

(6) The laundry facilities and areas shall be used for their intended purpose and shall not be used for storage of equipment or supplies not related to the laundering process.

(7) All laundry equipment shall be functional and in good repair. Any laundry equipment that is no longer in use shall be removed from the laundry area.

(8) Each lodging establishment that is newly constructed, undergoes a major renovation, or is licensed under a new ownership shall be required to have a hand sink in the laundry area. Each hand sink shall meet the requirements specified in K.A.R. 4-27-6.

(9) All housekeeping and cleaning supplies and equipment shall be stored in a designated area. The storage area may be in the laundry area if the supplies and equipment are physically separated from the laundry, laundry equipment, and laundry supplies.

(c) All laundry that is cleaned commercially off the premises shall have a segregated storage space for clean and dirty laundry and shall be located and equipped for convenient pick-up and delivery.

(d) Separate laundry facilities may be provided for use by guests if these facilities are located in a room or area of the lodging establishment designated only for guest laundry. The area and equipment shall be kept clean and in good repair.

(e) Single-use gloves shall be available for housekeeping and laundry staff and made available in the laundry and housekeeping areas.

(f) A specific location or area shall be provided for the storage of maintenance supplies and equipment. No other items shall be stored in this location or area. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

K.A.R. 4-27-12. Poisonous or toxic materials. Each licensee shall ensure that all of the following requirements are met: (a) Only those poisonous or toxic materials that are required for the operation and maintenance of the lodging establishment shall be allowed on the premises, including the following:

(1) Detergents, sanitizers, cleaning or drying agents, caustics, acids, polishes, and similar chemicals;

(2) insecticides and rodenticides;

(3) building maintenance materials, including paint, varnish, stain, glue, and caulking; and

(4) landscaping materials, including herbicides, lubricants, and fuel for equipment.

(b) The storage of poisonous or toxic materials shall meet all of the following requirements:

(1) The substances listed in each of the four categories specified in subsection (a) shall be stored on separate shelves or in separate cabinets. These shelves and cabinets shall be used for no other purpose.

(2) To prevent the possibility of contamination, poisonous or toxic materials shall not be stored above food, ice or ice-making equipment, linens, towels, utensils, single-service articles, or guest toiletry items. This requirement shall not prohibit the availability of cleaning or sanitizing agents in dishwashing or laundry work areas.

(c) Each bulk or original container of a poisonous or toxic material shall bear a legible manufacturer's label. All poisonous or toxic materials taken from a bulk container or an original container and put into another container shall be clearly identified with the common name of the material.

(d) Each poisonous or toxic material shall be used according to the manufacturer's directions. Additional safety requirements regarding the safe use of poisonous or toxic materials may be established by the regulatory authority upon discovery of the unsafe use of these materials.

(e) Each restricted-use pesticide shall be applied only by a certified applicator or a person under the direct supervision of a certified applicator and in accordance with all applicable statutes and regulations. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

K.A.R. 4-27-13. Public indoor areas. Each licensee shall ensure that all of the following requirements are met: (a) All indoor public areas shall be kept clean and free of debris.

(b)(1) All equipment, appliances, and fixtures shall be maintained in good repair. All equipment, appliances, and fixtures that require repair or maintenance either shall be removed for repair or maintenance or shall be designated as damaged or under repair by using signs, placards, cones, hazard tape, or other visual means to alert guests of any possible hazard.

(2) All unused or damaged equipment, appliances, and fixtures shall be removed.

(c)(1) All floors and floor coverings in public areas, service areas, hallways, walkways, and stairs shall be kept clean by effective means suitable to the finish.

(2) All floor coverings shall be maintained in good repair. All floor maintenance, repair, and replacement shall be done in a manner that prevents slipping or tripping hazards to guests.

(d) All furniture and items of décor shall be in good repair and kept clean by effective means suitable to the material and finish.

(e) All stairs, landings, hallways, and other walkways shall be kept free of debris and in good repair and shall meet the following requirements:

(1) The storage of items shall be prohibited.

(2) A minimum illumination of 10 foot-candles shall be required.

(f) Each fitness room, bathhouse, and spa shall meet the following requirements:

(1) Each area shall be cleaned and sanitized daily or more frequently, if necessary to maintain cleanliness.

(2) All floors shall be maintained in good repair and have a slip-resistant finish or covering that prevents slipping when wet.

(3) All equipment and fixtures that come into contact with guests, including benches, tables, stools, chairs, tanning beds, and fitness equipment, shall be constructed with a covering of a nonabsorbent material suitable for the use of the equipment or fixture. The following requirements shall be met:

(A) All surfaces that come into contact with guests shall be cleaned and sanitized daily or more frequently, if necessary to maintain cleanliness.

(B) Cleaning or sanitizing solutions shall be made available for guest use and shall be kept in clearly labeled bottles.

(C) All showers shall be cleaned and sanitized daily or more frequently, if necessary to maintain cleanliness.

(4)(A) Towels, including bath towels, hand towels, and paper towels, shall be provided in the area and made available upon guest request.

(B) Each cloth towel shall be laundered before being provided to a guest.

(C) A receptacle for wet or soiled towels shall be provided for guest use in the area. The receptacle shall be emptied at least once daily.

(5) All equipment, fixtures, and recreational items provided for guest use shall be maintained in good repair.

(6) Protective eye equipment shall be provided if tanning equipment is provided for guest use. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

K.A.R. 4-27-14. Ice and ice dispensing. Each licensee shall ensure that all of the following requirements are met: (a)(1) If ice is provided in a public area to guests or the general public, the ice shall be provided only through automatic, self-service dispensing machines that are constructed to prevent the direct access to bulk ice storage compartments by guests or the general public.

(2) Ice machines other than the type specified in paragraph (a)(1), including bin-type ice machines that allow direct access to the bulk ice storage compartments, shall not be accessible to guests or the general public. Any lodging employee may provide containers of ice to guests or the general public from this type of ice machine, from an icemaker, or from prepackaged ice.

(b)(1) Only ice that has been made from potable water and handled in a sanitary manner shall be provided by a lodging establishment. All ice shall be free of visible contaminants.

(2) All ice that is not made on the premises of the lodging establishment shall be obtained from a commercial source and shall be protected from contamination during transportation and storage.

(c) Each ice machine shall meet the following requirements:

(1) Be constructed of sanitary, durable, corrosion-resistant material and be easily cleanable;

(2) be constructed, located, installed, and operated to prevent contamination of the ice;

(3) be kept clean, free of any mold, rust, debris, or other contaminants, and maintained in good repair; and

(4) be drained through an air gap.

(d)(1) Each ice container or ice bucket shall meet the following requirements:

(A) Be made of smooth, nonabsorbent, impervious, food-grade materials and be easily cleaned;

(B) be kept clean and stored in a sanitary manner;

(C) be cleaned and sanitized before each new guest; and

(D) be provided with a sanitary, single-service use, food-grade liner that is changed daily.

(2) All canvas or wax-coated buckets or containers shall be prohibited.

(3) No ice container or ice bucket shall be located within the room housing the toilet.

(e) Each icemaker located in a guest room shall be kept clean and sanitary.

(1) No individual ice cube trays shall be used.

(2) All ice shall be removed from the icemaker's storage bin before each new guest. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

K.A.R. 4-27-15. Exterior premises. Each licensee shall ensure that all of the following requirements are met: (a) Exterior areas and surfaces.

(1) All exterior areas and surfaces, including alleys and driveways, shall be kept clean, free of debris, and in good repair.

(2) Each walking, driving, and parking surface shall be graded or maintained to prevent the pooling of water.

(3) All lawns and landscaping shall be mowed or pruned as needed to promote guest safety.

(4) All parking areas and walkways shall be illuminated for guest safety and shall be kept free of debris.

(5) All unused or discarded equipment and materials shall be removed from the premises, except when placed in a designated storage area.

(6)(A) All exterior balconies, landings, porches, decks, stairways, and ramps shall be kept in good repair and free of debris and shall be illuminated for guest safety.

(B) Storage on stairs, landings, and ramps shall be prohibited.

(C) All guards and railings shall be attached securely and shall be kept in good repair.

(D) All ramps shall have a slip-resistant surface.

(E) All exterior stairways, ramps, landings, and walkways shall be kept free of ice and snow.

(b) Outside playgrounds and recreational areas.

(1) All equipment shall be kept clean and in good repair at all times. All protruding bolts, screws, and nails and all sharp edges shall be removed or covered.

(2) The ground cover under children's play equipment shall be a soft surface, including turf, rubber chips, bark mulch, clean sand, or any other surface approved by the regulatory authority.

(3) Unused equipment shall be stored in a designated area.

(4) If the area is open for nighttime use, lighting shall be provided for guest safety.

(5) The area shall be kept clean and free of debris.

(6) If fencing is provided, the fencing shall be kept in good repair.

(c) Refuse containers.

(1) The area where refuse containers are located shall be kept free of debris and cleaned as necessary to prevent the attraction and harborage of insects, rodents, and other pests and to minimize odors.

(2) Containers of adequate capacity or number shall be available to store all refuse that accumulates between refuse pickups. All refuse containers shall be emptied at least once each week or more frequently, if necessary to meet the requirements of these regulations. All rotten waste shall be removed daily.

(3) All refuse container lids shall be closed. All refuse containers shall be kept on a solid surface. Solid surfaces shall include concrete, asphalt, and any other hard surface approved by the regulatory authority.

(d) Outdoor vector control.

(1) The premises shall be free of any harborage conditions that can lead to or encourage infestations of rodents, insects, and any other pests.

(2) Control measures shall be taken to protect against the entrance of rodents, insects, and any other pests into the lodging establishment. All buildings shall be vermin- proofed and kept in a verminproof condition.

All doors leading outside shall be tightfitting to eliminate entrance points for rodents, insects, and any other pests. All windows and doors that can be opened for ventilation shall have screening material that is at least 16 mesh to the inch and shall be tightfitting and kept in good repair.

(3) Identified infestation problems shall be treated by a licensed pest control operator (PCO).

(4) All control measures, both mechanical and chemical, shall be used in accordance with each manufacturer's recommendations.

(e) Exterior storage.

(1) A storage area shall be provided for maintenance and recreational equipment, machinery, and any other maintenance items.

(2) Only those items necessary for the operation and maintenance of the lodging establishment shall be kept in a storage area.

(3) All poisonous and toxic materials shall be stored as specified in K.A.R. 4-27-12.

(4) Each storage area shall be kept free of debris, filth, and any harborage conditions.

(5) All articles in need of repair may be stored on a short-term basis, which shall not exceed six months. All articles that are not repaired within six months shall be discarded or moved to an off-site storage facility.

(f) Outdoor space for pets. All pets shall be kept on a leash or controlled in a manner that prevents the pets from running freely about the premises. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010)

K.A.R. 4-27-16. Swimming pools, RWFs, and hot tubs. (a) General requirements. Each licensee shall ensure that all swimming pools, RWFs, and hot tubs are kept sanitary and in good repair.

(1) Each swimming pool, RWF, and hot tub shall meet the requirements in these regulations, unless local ordinances pertaining to planning and design, lifesaving and safety equipment, water quality, and sanitation exist and these ordinances are as restrictive or more restrictive than these regulations.

(2) Each licensee shall maintain records of each inspection conducted by a local regulatory agency for at least one year. The inspection records shall be made available for review by the regulatory authority, upon request.

(b) Design and safeguards.

(1) Each plan for a new swimming pool or RWF and for a swimming pool or RWF undergoing major renovation, including installation of a diving board, slide, or other similar recreational devices, shall be designed by a licensed engineer, architect, or other qualified professional and shall be submitted to the regulatory authority before the start of construction. Submission of documentation of plan approval by the local regulatory agency shall meet the requirements of this paragraph.

(2) Each grate over a main drain in each swimming pool or RWF shall be intact, firmly affixed at all times, and designed to prevent swimmer entanglement, entrapment, or injury. Other methods to prevent swimmer entanglement, entrapment, or injury may include multiple main drains, antivortex drain covers, or any similar device approved by the regulatory authority.

(3) The depth of water in each swimming pool or RWF shall be plainly marked with at least four-inch high numbers of a color that contrasts with the color of the pool decking or vertical pool wall.

(A) Water depth markings for an inground swimming pool shall be clearly marked on the edge of the deck and visible at all times. In addition, water depth markings may be placed above the water surface on the vertical pool walls and shall be visible at all times.

(B) Water depth markings for each aboveground swimming pool or RWF shall be on the edge of the deck and shall be visible to persons entering the swimming pool. If water depth markings cannot be placed on the edge of the deck, another means shall be used so that the water depth is visible to persons entering the swimming pool.

(C) The water depth markings in each swimming pool or RWF shall be located in the following areas:

(i) At the maximum and minimum depths. Intermediate increments of depth may be used in addition to the required maximum and minimum depths; and

(ii) the transition point between the shallow end, which shall be five feet or less, and the deep end, which shall be more than five feet. This transition point shall be marked by a line on the floor and the walls of the swimming pool or RWF or by a safety rope equipped with buoys.

(4) Each lighting and electrical system for a swimming pool, RWF, or hot tub shall be kept in good repair at all times. The following requirements shall be met:

(A) Artificial lighting shall be provided at each swimming pool, RWF, or hot tub if used at night and for each indoor swimming pool, RWF, or hot tub. The lighting shall illuminate all portions of each swimming pool, RWF, or hot tub.

(B) All artificial lighting located in the water shall be designed and maintained to prevent electrical shock hazards to guests.

(5) Each outdoor swimming pool and RWF shall be protected by a fence, wall, building, or other enclosure that is at least four feet in height.

(A) Each enclosure shall be made of durable material and kept in good repair.

(B) Each gate shall have self-closing and self-latching mechanisms. The self-latching mechanism shall be installed at least four feet from the bottom of the gate.

(C) A hedge shall not be an acceptable protective enclosure.

(6) Each door leading into an indoor or enclosed swimming pool or RWF area shall have self-closing and self-latching mechanisms. The self-closing mechanism shall be at least four feet from the bottom of the door.

(c) Lifesaving and safety equipment.

(1) Each swimming pool or RWF shall have lifesaving equipment, consisting of at least one U.S. coast guard-approved flotation device that can be thrown into the water and at least one reaching device.

(A) The flotation device shall be attached to a rope that is at least as long as one and one-half times the maximum width of the swimming pool or RWF. If a lifeguard is on duty, life-saving rescue equipment, including rescue tubes, may also be used.

(B) The reaching device shall be a life pole or a shepherd's crook-type of pole, with a minimum length of 12 feet.

(C) Each lifesaving device shall be located in a conspicuous place and shall be accessible. The lifeguard personnel shall keep their rescue equipment close for immediate use.

(D) Each lifesaving device shall be kept in good repair.

(2) A first-aid kit shall be accessible to the lodging employees.

(3) No glass containers shall be permitted in the swimming pool, RWF, or hot tub area.

(4) Each swimming pool, RWF, and hot tub and each deck shall be kept clean of sediment, floating debris, visible dirt, mold and algae and shall be maintained free of cracks, peeling paint, and tripping hazards.

(5) Each swimming pool, RWF, and hot tub shall be refinished or relined if the bottom or wall surfaces cannot be maintained in a safe and sanitary condition.

(6) If handrails are not present, all steps leading into the swimming pool or RWF shall be marked in a color contrasting with the color of the interior of the swimming pool and RWF so that the steps are visible from the swimming pool or RWF deck.

(7) All steps, ladders, and stairs shall be easily cleanable, in good repair, and equipped with nonslip treads. Handrails and ladders, if present, shall be provided with a handhold and securely attached.

(8) The rules of operation and safety signs for each swimming pool, RWF, and hot tub shall be posted in a conspicuous place at the swimming pool, RWF, or hot tub. Each swimming pool and RWF without a lifeguard shall have posted the following sign: "Warning -- No Lifeguard On Duty." The sign shall be legible, with letters at least four inches in height.

(9) If chlorinating equipment is located indoors, the chlorinating equipment shall be housed in a separate room, which shall be vented to the outside or to another room that is vented to the outside. If chlorinating equipment is located outdoors and within an enclosed structure, the structure shall be vented to the outside.

(d) Water quality and sanitation. Each licensee shall ensure that all of the following requirements are met:

(1) Each swimming pool, RWF, and hot tub shall be maintained to provide for continuous disinfection of the water with a chemical process. This process shall use a disinfectant that leaves a measurable residual in the water.

(A) If chlorine or bromine is used to disinfect the water of any swimming pool or RWF, the water shall have a disinfectant residual level of at least 1.0 part per million (ppm) and not more than 5.0 ppm.

(B) If chlorine or bromine is used to disinfect the water of any hot tub, the water shall have a disinfectant residual level of at least 2.0 ppm and not more than 5.0 ppm.

(C) Each means of disinfection other than those specified in paragraphs (d)(1)(A) and (B) shall be used only if the licensee has demonstrated that the alternate means provides a level of disinfection equivalent to that resulting from the residual level specified in paragraph (d)(1)(A) or (B).

(2) The pH of the water in each swimming pool, RWF, and hot tub shall be maintained at not less than 7.0 and not more than 8.0.

(3) Each licensee shall use a chemical test kit or a testing device approved by the regulatory authority. Each testing kit or device shall be appropriate for the disinfecting chemical used and capable of accurately measuring disinfectant residual levels of 0.5 ppm to 20.0 ppm. In addition, a chemical test kit or testing device for measuring the pH of the water shall be used and capable of accurately measuring the pH of water in 0.2 increments.

(4) The water in each swimming pool, RWF, and hot tub shall have sufficient clarity at all times so that one of the following conditions is met:

(A) A black disc with a diameter of six inches is clearly visible in the deepest portion of the swimming pool or RWF.

(B) The bottom drain at the deepest point of the swimming pool or RWF is clearly visible, and the bottom of the hot tub is clearly visible.

(5) The water in each swimming pool, RWF, and hot tub shall be free of scum and floating debris. The bottom and walls shall be free of dirt, algae, and any other foreign material.

(6) No chemical shall be added manually and directly to the water of any swimming pool, RWF, or hot tub while any individual is present in the water.

(7) The temperature of the water in each hot tub shall not exceed 104 degrees Fahrenheit.

(A) Each hot tub shall be operated in accordance with the manufacturer's specifications.

(B) Each hot tub shall have a thermometer or other device to accurately record the water temperature within plus or minus two degrees.

(e) Fecal accident in a swimming pool and RWF. If a fecal accident occurs in a swimming pool or RWF, the following requirements shall be met:

(1) In response to any accident involving formed feces, the following requirements shall be met:

(A) Direct the guests to leave the swimming pool or the RWF, and do not allow any individuals to reenter until the decontamination process has been completed. The closure times can vary since the decontamination process takes from 30 to 60 minutes;

(B) remove as much fecal material as possible using a net or scoop, and dispose of the material in a sanitary manner. Sanitize the net or scoop;

(C) raise the disinfectant level to 2.0 ppm and ensure that the water pH is between 7.2 and 7.8; and

(D) return the disinfectant level to the operating range specified in paragraph (d)(1)(A) before the swimming pool or RWF is reopened to guests.

(2) In response to any accident involving diarrhea, the following requirements shall be met:

(A) Direct guests to leave the swimming pool or the RWF, and do not allow any individuals to reenter until the decontamination process has been completed;

(B) remove as much fecal material as possible using a scoop, and dispose of the material in a sanitary manner. Sanitize the scoop. Vacuuming the fecal material shall be prohibited;

(C) raise the disinfectant level to 20.0 ppm and maintain a water pH of at least 7.2 but not more than 7.8. This level of concentration shall be maintained at least eight hours to ensure inactivation of *Cryptosporidium*. A lower disinfectant level and a longer inactivation time may be used according to the following table:

Cryptosporidium inactivation for diarrheal accident

Disinfectant levels (ppm)	Disinfection time
1.0	6.5 days
10.0	16 hours
20.0	8 hours

(D) ensure that the filtration system is operating and maintaining the required disinfectant levels during the disinfection process. Backwash the filter. Do not return the backwashed water through the filter. Replace the filter medium, if necessary; and

(E) return the disinfectant level to the operating range specified in paragraph (d)(1)(A) before the swimming pool or RWF is reopened to guests.

(f) Vomiting accident in a swimming pool or RWF. If a vomiting accident occurs in a swimming pool or RWF, the procedures in paragraph (e)(1) shall be followed.

(g) Body fluid spills at a swimming pool or RWF. All body fluid spills that occur on swimming pool or RWF equipment or hard surfaces, including decking, shall be cleaned and chemically sanitized. Disposable gloves shall be available for employees' use during cleanup. The following cleanup method shall be used:

(1) Wipe up the spill using absorbent, disposable material. Paper towels may be used;

(2) use a bleach solution by combining one part bleach and 10 parts water. Pour the bleach solution onto the contaminated surface, leave the solution on the surface for at least 10 minutes, and rinse the surface with clean water;

(3) disinfect all nondisposable cleaning materials, including mops and scrub brushes, and allow to air-dry; and

(4) require each employee assisting with the cleanup to wash that employee's hands with warm water and soap after the cleanup is completed.

(h) Fecal or vomiting accident in a hot tub. If a fecal accident or vomiting occurs in a hot tub, all of the following requirements shall be met:

(1) All guests shall be required to leave the hot tub, and the water shall be completely drained.

(2) The hot tub shall be disinfected according to the manufacturer's specifications.

(3) The filtering system shall be disinfected or the filter medium shall be replaced with a clean filter medium before refilling the hot tub with clean water.

(i) Operation and maintenance of a swimming pool, RWF, or hot tub. Each licensee shall ensure that all of the following requirements for each swimming pool, RWF, and hot tub are met:

(1) Daily operational logs shall be maintained for at least one year at the lodging establishment and made available to the regulatory authority, upon request. These logs shall include the date and time the information was collected and the name or initials of the person who collected the information. These logs shall also record the following information:

(A) The disinfectant residuals shall be recorded at least once daily when the swimming pool, RWF, or hot tub is available for guest use or more often, if necessary to maintain the water quality as specified in subsection (d).

(B) The pH test shall be recorded at least once daily when the swimming pool, RWF, or hot tub is available for guest use or more often, if necessary to maintain the water quality as specified in subsection (d).

(C) The temperature reading of each hot tub shall be recorded at least once daily when the hot tub is available for guest use.

(2) Each fecal and vomiting accident log shall include the time and date of the accident and the disinfection

measures taken.

(3) Each indoor swimming pool area and chemical storage room shall be either vented directly to the exterior or vented to a room that is vented directly to the exterior.

(4) All chemicals applied to a swimming pool, RWF, or hot tub shall be used, handled, stored, and labeled in accordance with the manufacturer's specifications.

(5) All recreational equipment shall be kept sanitary. Recreational equipment shall include slides, diving boards, play equipment, water sports equipment, and accessory items available to guests, including floats, tubes, air mattresses, and pads for water slides.

(6) A cleaning system shall be used to remove dirt, algae, and any other foreign material from the bottom of the swimming pool or RWF.

(7) All surface skimmers, strainer baskets, and perimeter overflow systems shall be kept clean and in good repair.

(8) The water in each swimming pool and each RWF shall be maintained at the manufacturer's recommended level so that the water will flow into each skimmer and strainer.

(9) The recirculation system serving each swimming pool, RWF, and hot tub shall operate continuously or in accordance with the manufacturer's specifications. The filtration and recirculation systems shall be maintained in accordance with the manufacturer's specifications. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

K.A.R. 4-27-17. Water supply systems. Each licensee shall ensure that all of the following requirements are met: (a) Sufficient potable water to meet the needs of the lodging establishment shall be provided from a source constructed and operated pursuant to K.S.A. 65-161 et seq., and amendments thereto.

(b) No water supply system deemed unsafe by the regulatory authority shall be used as a potable water supply.

(c)(1) Each nonpublic water supply system shall be constructed, maintained, and operated as specified in K.S.A. 65-161 et seq., and amendments thereto.

(2) All water from a nonpublic water supply system shall meet the state drinking water quality standards specified in K.S.A. 65-161 et seq., and amendments thereto. The most recent sample report for the nonpublic water supply system used by the lodging establishment shall be retained for at least 12 months at the lodging establishment and shall be made available to the regulatory authority upon request.

(d) During any period when a boil-water order is in effect, including a precautionary boil-water notice or advisory issued by the regulatory authority on a public or nonpublic water supply, the licensee shall meet the following requirements until the problem has been corrected:

(1) Notify each guest, verbally upon check-in and by written notice placed in each rented guest room, that the plumbed water is not potable and only potable water should be used for drinking and for brushing teeth;

(2) discard any ice that could have been made from or exposed to contaminated water; and

(3) obtain a temporary, alternate supply of potable water by using one of the following:

(A) A supply of commercially bottled drinking water;

(B) one or more closed, portable, bulk water containers;

(C) an enclosed vehicular water tank;

(D) an on-premises water storage tank; or

(E) any other alternative water source if approved by the regulatory authority. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

K.A.R. 4-27-18. Sewage systems. Each licensee shall ensure that all of the following requirements are met: (a) All sewage shall be disposed of through an approved facility, including one of the following:

(1) A public sewage treatment plant; or

(2) an individual sewage disposal system that is constructed, maintained, and operated according to K.S.A. 65-161 et seq., and amendments thereto, and meets all applicable sanitation requirements.

(b) A temporary sewage disposal facility shall be allowed only as approved by the regulatory authority in response to a disaster.

(c) All condensate drainage, rainwater, and other nonsewage liquids shall be drained from the point of discharge to disposal pursuant to K.S.A. 65-161 et seq., and amendments thereto. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

K.A.R. 4-27-19. Electrical systems. (a) Each licensee shall ensure that the electrical wiring is installed and maintained in accordance with all applicable local electrical codes. In the absence of local electrical codes, the electrical wiring shall be installed and maintained by a licensed electrician. Each licensee shall ensure that all of the following requirements are met:

(1)(A) Each newly constructed lodging establishment shall have a ground-fault circuit interrupter in each electrical outlet located within five feet of any water source, including a swimming pool and hot tub.

(B) Each existing lodging establishment in which major renovation or rewiring has occurred shall be required to have a ground-fault circuit interrupter in each electrical outlet located within five feet of any water source, including a swimming pool and hot tub.

(C) Each licensee shall ensure that the lodging establishment has a ground-fault circuit interrupter in each electrical outlet located within five feet of any water source, including a swimming pool and hot tub.

(2) Each electrical switch and each outlet shall be covered by a faceplate. Each junction box shall have a

junction box cover.

(3) All circuit breaker boxes, fuse boxes, and electrical panels shall be protected from physical damage and kept in good condition. All fuses and circuits shall be labeled to identify the circuit location.

The storage of any item that obstructs access to any circuit box shall be prohibited.

(4) All wire splices shall be located in covered junction boxes.

(5) Bare or frayed wiring shall be prohibited.

(6) All three-prong outlets shall be grounded. Each appliance shall be grounded in accordance with the manufacturer's specifications.

(b) All emergency lighting shall be kept in working condition.

(c) The permanent use of extension cords in guest rooms shall be prohibited.

Individual branch circuits, including multiple-plug outlet strips that contain fuse breakers and multiple-plug outlet adapters that do not exceed the amperage for which the outlets are rated, shall be permitted.

(d) The temporary use of extension cords shall be allowed for housekeeping and maintenance purposes if the extension cords are rated for industrial use.

(e) The wattage of light bulbs shall not exceed the wattage rating of the corresponding light fixtures.

Empty light sockets shall be prohibited. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

K.A.R. 4-27-20. Plumbing systems. (a) Each licensee shall ensure that all plumbing is installed and maintained in accordance with all applicable local plumbing codes. In the absence of local plumbing codes, all plumbing shall be installed and maintained by a licensed plumber.

(b) Each licensee shall ensure that all of the following requirements are met:

(1) Potable water under pressure shall be available at all times at each fixture designed to provide water. Hot water shall be provided to each fixture designed to use hot water.

(2) Each toilet room, bathing facility, and laundry area shall be provided with ventilation to minimize condensation and to prevent mold, algae, and odors.

Each newly constructed lodging establishment and each lodging establishment undergoing major renovation shall be required to have mechanical ventilation in each toilet room, bathing facility, and laundry area.

(3) Each fixture drain shall be plumbed with a P-trap.

(4) All openings for the passage of plumbing shall be verminproof.

(5) No fitting, connection, device, or method of installation of plumbing shall obstruct or retard the flow of water, wastes, sewage, or air in the drainage or venting system.

(c) All backflow devices shall meet the design specifications for their intended use. All potable water supplies shall be protected from sources of potential contamination. Each licensee shall ensure that all of the following requirements are met:

(1) If provided, each boiler unit, fire sprinkler system with chemical additives, lawn sprinkler with a means for injection of pesticides, herbicides, or other chemicals, and pumped or repressurized cooling or heating system shall be protected by a reduced-pressure-principle backflow prevention assembly.

(A) The backflow prevention assembly shall be tested at least annually.

(B) Documentation of each test shall be maintained at the lodging establishment for at least one year and shall be made available to the regulatory authority upon request.

(2) If provided, each fire sprinkler system not using chemical additives and lawn sprinkler system without a means for injection of pesticides, herbicides, or other chemicals shall be protected by a double-check valve assembly.

(A) The double-check valve assembly shall be tested at least annually.

(B) Documentation of each test shall be maintained at the lodging establishment for at least one year and shall be made available to the regulatory authority upon request.

(3) If provided, each threaded faucet to which a hose is connected, flush valve, and any similar device shall be protected by a vacuum breaker. Each commercial dishwasher and each commercial laundry machine shall be protected by either a vacuum breaker or an air gap.

(4) If provided, each relief valve discharge line from a water heater, water-holding tank, cooling tower, or water softener, each discharge line from a commercial laundry machine, and each condensation line shall be protected by an air gap.

(5) Each swimming pool water supply line shall be protected by either an air gap or a double-check valve assembly.

(6) Fire sprinklers plumbed into a waterline over gas water heaters or furnaces, or both, shall not be required to have a backflow device unless required by local ordinance. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

K.A.R. 4-27-21. Heating, ventilation, and air-conditioning (HVAC) systems. (a) Each licensee shall ensure that each guest room has heating, ventilation, and related heating and ventilation equipment.

(1) All equipment shall be installed according to the manufacturer's directions and shall be kept in operating condition.

(2) A means to control the temperature in the guest room shall be provided in each guest room that is furnished with a separate heating or air-conditioning unit.

(3) If the guest room has air-conditioning, the air-conditioning system shall meet the requirements specified in

paragraphs (a)(1) and (2).

(b) Unvented fuel-fired heaters, unvented fireplaces, and similar devices and portable electrical space heaters shall be prohibited from use in all areas of the lodging establishment, unless designed by the manufacturer for commercial use and approved by the regulatory authority. The following conditions shall be met:

(1) The unvented fuel-fired heater, unvented fireplace, or similar device or the portable electrical space heater is not the primary source of heat.

(2) The unvented fuel-fired heater, unvented fireplace, or similar device or the portable electric space heater is not used in a guest room.

(c) All gas and electric heating equipment shall be equipped with thermostatic controls.

(d) All gas water heaters, gas furnaces, and other gas heating appliances shall be vented to the outside.

(e) A gas shutoff valve shall be located next to each gas appliance, gas furnace, and gas water heater.

(f) Each furnace and each air-conditioning unit shall be equipped with an electrical fuse breaker to protect the unit from electrical overload.

(g) Each furnace room or room containing a gas water heater or any other fuel-fired appliance shall be provided with adequate air for circulation.

(h) Each filter shall be changed according to the manufacturer's specifications. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

K.A.R. 4-27-22. Lodging establishment inspections by qualified individuals, private entities, or public entities. (a) "Supplemental inspection" shall mean an inspection of a lodging establishment conducted by a qualified person employed by a lodging business, lodging trade organization, or local governmental entity and not employed by the Kansas department of agriculture.

(b) Each person who wishes to conduct a supplemental inspection of a lodging establishment shall complete the following requirements:

(1) Submit to the secretary, or the secretary's designee, a written letter of application and statement describing the applicant's knowledge of lodging standards established pursuant to K.S.A. 36-506, and amendments thereto, acquired by education, training, and experience; and

(2) answer at least 80% of the questions correctly to pass a written examination administered by the secretary, or secretary's designee. The written examination shall test the applicant's knowledge of lodging standards established pursuant to K.S.A. 36-506, and amendments thereto.

(c) A supplemental inspection report on a lodging establishment shall be accepted by the secretary if all of the following conditions are met:

(1) The person conducting the supplemental inspection meets the requirements in subsection (b).

(2) The supplemental inspection is conducted to determine if the lodging establishment meets lodging standards established pursuant to K.S.A. 36-506, and amendments thereto.

(3) The supplemental inspection report is submitted to the secretary no later than 10 calendar days from the date the inspection occurred. If an "imminent health hazard," as defined in K.A.R. 4-27-5, is discovered during the inspection, the person shall notify the secretary, or the secretary's designee, within 12 hours of the discovery, as required in K.A.R. 4-27-5.

(4) The supplemental inspection report thoroughly describes conditions in the lodging establishment at the time of the inspection. Each violation of a lodging establishment standard shall be described in detail and photographed. The supplemental inspection report shall describe any actions taken by the licensee to correct each violation.

(d) An inspection of the lodging establishment may be conducted by department lodging inspectors to determine the accuracy of a supplemental report. The inspection shall be conducted within five days after receipt of a supplemental inspection report.

(e) The secretary's acceptance of a supplemental inspection report shall not preclude the department from conducting an inspection to assess the lodging establishment's compliance with lodging establishment standards or determine the accuracy of the supplemental inspection report. The supplemental inspection report, if accepted, may be considered by the secretary when determining the inspection frequency of a lodging establishment. (Authorized by K.S.A. 2009 Supp. 36-506; implementing K.S.A. 2009 Supp. 36-519; effective June 4, 2010.)

Article 28. – Food Safety

K.A.R. 4-28-1. Definitions. (a) ''Bakery product'' shall mean bread, rolls, cake, pies, cookies, and all similar goods used or intended to be used for human consumption.

(b) ''Food'' shall have either of the following meanings:

(1) The meaning specified in K.S.A. 36-501, and amendments thereto, when relating to the licensing, inspection, and regulation of the following:

(A) Mobile retail ice cream vendors;

(B) food service establishments located in retail food stores; and

(C) food vending machines, food vending machine companies, and food vending machine dealers; or

(2) the meaning specified in K.S.A. 65-688, and amendments thereto, when relating to the licensing, inspection, and regulation of retail food stores and food processing plants.

(c) ''Food processing plant'' shall have the meaning specified in K.S.A. 65-688, and amendments thereto.

(d) ‘‘Food service establishment located in a retail food store’’ shall mean a ‘‘food service establishment,’’ as defined in K.S.A. 36-501 and amendments thereto, that is located in a ‘‘retail food store,’’ as defined in subsection (j).

(e) ‘‘Food vending machine’’ shall have the meaning specified in K.S.A. 36-501, and amendments thereto.

(f) ‘‘Food vending machine company’’ shall have the meaning specified in K.S.A. 36-501, and amendments thereto.

(g) ‘‘Food vending machine dealer’’ shall have the meaning specified in K.S.A. 36-501, and amendments thereto.

(h) “Frozen food locker plant” shall mean any plant that provides lockers, cabinets, boxes, baskets, or other receptacles kept constantly at the temperatures specified in K.A.R. 4-28-25 for the storage of food products.

(i) ‘‘Mobile retail ice cream vendor’’ shall mean a vehicle-mounted prepackaged frozen dessert facility designed to be readily movable.

(j) ‘‘Retail food store’’ shall have the meaning specified in K.S.A. 65-688, and amendments thereto.

(k) ‘‘Secretary’’ shall mean the secretary of agriculture or the secretary’s authorized representative. (Authorized by K.S.A. 2008 Supp. 65-673; implementing K.S.A. 2008 Supp. 65-673 and 74-581; effective, T-4-11-5-04, Nov. 5, 2004; effective Feb. 18, 2005; amended June 4, 2010.)

K.A.R. 4-28-2. Adoption by reference. The provisions of 21 C.F.R. Parts 100 through 169, excluding 21 C.F.R. 100.1 and 100.2, as in effect on April 1, 2008, are hereby adopted by reference and shall apply to food processing plants. (Authorized by K.S.A. 2008 Supp. 65-673; implementing K.S.A. 2008 Supp. 65-673 and 74-581; effective, T-4-11-5-04, Nov. 5, 2004; effective Feb. 18, 2005; amended June 4, 2010.)

K.A.R. 4-28-3. Fees; mobile retail ice cream vendor. The license fee for each mobile retail ice cream vendor engaged solely in the sales of prepackaged frozen desserts shall be five dollars. Each license shall expire on December 31 in the year for which the license is issued. (Authorized by K.S.A. 2003 Supp. 36-503; implementing K.S.A. 2003 Supp. 36-503 and L. 2004, Ch. 192, Sec. 2; effective Feb. 18, 2005.)

K.A.R. 4-28-4. Fees; application for food vending machine company. The onetime application fee for each food vending machine company doing business in Kansas shall be $30. (Authorized by K.S.A. 36-504; implementing K.S.A. 36-504 and L. 2004, Ch. 192, Sec. 2; effective Feb. 18, 2005.)

K.A.R. 4-28-5. Fees; food processing plant. (a) Each person wanting to operate a food processing plant shall submit an application on a form supplied by the department with the following fees:

(1) An application fee of $100; and

(2) one of the following license fees based on the size and type of the plant, as applicable:

(A) For each food processing plant that only stores food, one of the following fees:

(i) Less than 1,000 square feet: $50;

(ii) 1,000 square feet through 5,000 square feet: $75;

(iii) 5,001 square feet through 10,000 square feet: $105;

(iv) 10,001 square feet through 50,000 square feet: $140; or

(v) more than 50,000 square feet: $180; and

(B) for each food processing plant not specified in paragraph (a)(2)(A), one of the following fees:

(i) Less than 1,000 square feet: $80;

(ii) 1,000 square feet through 5,000 square feet: $135;

(iii) 5,001 square feet through 10,000 square feet: $190;

(iv) 10,001 square feet through 50,000 square feet: $245; or

(v) more than 50,000 square feet: $300.

(b) For the purpose of this regulation, a facility that only stores food shall include any premises, establishment, building, room, area, facility, or place where food is stored, kept, or held for distribution, regardless of whether the food is temperature-controlled.

(c) For the purpose of this regulation, “food processing plant” shall not include either of the following:

(1) A facility in which fresh fruits and vegetables are harvested and washed, if the fruits and vegetables are not otherwise processed at the facility; or

(2) a storage facility used solely for the storage of grain or other raw agricultural commodities.

(d) Each license issued shall expire on December 31 in the year for which the license is issued.

(e) Each license shall require annual renewal by the licensee's submission of an application for renewal, on a form supplied by the department, and the applicable license fee specified in subsection (a). (Authorized by K.S.A. 2007 Supp. 74-581, as amended by L. 2008, Ch. 48, §9; implementing K.S.A. 65-689 ,as amended by L. 2008, Ch. 48, §7, and L. 2008, Ch. 48, §2; effective Feb. 18, 2005; amended Dec. 5, 2008.)

K.A.R. 4-28-6. Fees; retail food store. Each retail food store shall be licensed by the secretary. (a) Each person operating or wanting to operate a retail food store shall submit an application on a form supplied by the department with the following fees:

(1) Application fee. Each person shall submit a onetime application fee based on the size of the store as follows:

(A) Less than 5,000 square feet: $50;

(B) 5,000 to 15,000 square feet: $100; and

(C) more than 15,000 square feet: $150.

(2) License fee. Each person shall submit a license fee based on the size of the store as follows:

(A) Less than 5,000 square feet: $50;

(B) 5,000 to 15,000 square feet: $100; and

(C) more than 15,000 square feet: $150.

(b) Each license shall expire on December 31 in the year in which the license is issued.

(c) Each license shall require annual renewal by the licensee's submission of an application for renewal, on a form supplied by the department, and license fee specified in paragraph (a)(2). (Authorized by K.S.A. 65-689; implementing K.S.A. 65-689 and L. 2004, Ch. 192, Sec. 2; effective Feb. 18, 2005.)

K.A.R. 4-28-7. Fees; food service establishment located in a retail food store. (a) Each person operating or wanting to operate a food service establishment located in a retail food store shall submit an application on a form supplied by the department with the following fees:

(1) The application fee shall be $200.

(2) The license fee shall be $200.

(b) Each license shall expire on December 31 in the year for which the license is issued.

(c) Each license shall require annual renewal by the licensee's submission of an application for renewal, on a form supplied by the department, and the license fee specified in paragraph (a)(2). (Authorized by K.S.A. 2003 Supp. 36-503; implementing K.S.A. 2003 Supp. 36-503 and L. 2004, Ch. 192, Sec. 2; effective Feb. 18, 2005.)

K.A.R. 4-28-8. Definitions. Chapter one of the 2005 "food code," published by the U.S. department of health and human services, is adopted by reference, subject to the following additions, deletions, and substitutions: (a)(1) Wherever the word "PERMIT" appears in this chapter, the word shall be deleted and shall be replaced by "LICENSE," and wherever the phrase "PERMIT HOLDER" appears in this chapter, the phrase shall be deleted and shall be replaced by the word "LICENSEE."

(2) Wherever the parenthetical phrase "(Time/Temperature Control for Safety Food)" appears in this chapter, the phrase shall be deleted.

(3) In subpart 1-201.10(B) under "additive," the definition of "food additive" shall be deleted and shall be replaced by the definition in K.S.A. 65-656, and amendments thereto.

(4) In subpart 1-201.10(B) under "additive," the definition of "color additive" shall be deleted and shall be replaced by the definition in K.S.A. 65-656, and amendments thereto.

(5) In subpart 1-201.10(B), the definition of "adulterated" shall be deleted and shall be replaced by the definition of "food deemed adulterated" in K.S.A. 65-664, and amendments thereto.

(6) In the definition of "a_w," the symbol "A_w" at the end of the definition shall be changed to read "a_w."

(7) The following definition of "commissary" shall be added after the definition of "comminuted":

"Commissary" means a catering establishment, restaurant, or similar place that is necessary for the safe operation of a MOBILE FOOD ESTABLISHMENT or PUSHCART in which food, containers, or supplies are kept, handled, prepared, packaged, or stored.

(8) In subpart 1-201.10(B) in the definition of "disclosure," the words "for consumers" shall be added after the word "identifies."

(9) In subpart 1-201.10(B), the following changes shall be made:

(A) Under "food establishment" in paragraph (2)(a), the word "and" shall be deleted.

(B) Under "food establishment" in paragraph (2)(b), the period after "FOOD" shall be deleted and shall be replaced by a semicolon.

(C) Under "food establishment" in paragraph (2), the following paragraphs shall be added after paragraph (b):

"(c) A 'food service establishment' as defined in K.S.A. 36-501, and amendments thereto;

"(d) A 'food vending machine' as defined in K.S.A. 36-501, and amendments thereto; and

"(e) A 'retail food store' as defined in K.S.A. 65-688, and amendments thereto."

(D) Under "food establishment" in paragraph (3) subparagraph (a) shall be deleted.

(E) Under "food establishment" in paragraph (3), subparagraph (b) shall be redesignated as (a).

(F) Under "food establishment" in paragraph (3), subparagraph (c) shall be redesignated as (b).

(G) Under "food establishment" in paragraph (3), subparagraph (d) shall be redesignated as (c).

(H) Under "food establishment" in paragraph (3), subparagraph (e) shall be redesignated as (d).

(I) Under "food establishment" in paragraph (3), subparagraph (f) shall be redesignated as (e). Insert the word "only" after the words "offers FOOD," replace the number "6 " with "4," and delete the words "the number of guests served does not exceed 18."

(J) Under "food establishment" paragraph (3), subparagraph (g) shall be redesignated as (f).

(10) In subpart 1-201.10(B), the definition of "food processing plant" shall be deleted and shall be replaced by the definition of "food processing plant" in K.S.A. 65-688, and amendments thereto.

(11) The following definition of "mobile food establishment" shall be added after the definition of "mg/L":

"Mobile food establishment" means a self-contained FOOD ESTABLISHMENT that is mounted on axles and wheels, is designed to be readily moveable, and remains at one physical address for not more than 17 consecutive days.

(12) In subpart 1-201.10(B), the definition of "person" shall be deleted and shall be replaced by the definition of "person" in K.S.A. 36-501(j), and amendments thereto.

(13) The following definition of "pushcart" shall be added after the definition of "public water supply system":

"Pushcart" means a manually propelled vehicle limited to serving non-potentially hazardous foods or POTENTIALLY HAZARDOUS FOODS that require only limited preparation or prepackaged food maintained at proper temperatures.

(14) In subpart 1-201.10(B), the definition of "person in charge" shall be deleted and shall be replaced by the following: "'Person in charge' means at the time of inspection, any individual or employee present in a FOOD ESTABLISHMENT who is responsible for the operation. If no designated individual or employee is the person in charge, then any employee present is the person in charge."

(15) In subpart 1-201.10(B), in the definition of "potentially hazardous food," the following changes shall be made:

(A) In paragraph (1), the parenthetical abbreviation "(TCS)" shall be deleted.

(B) In paragraph (2), the designation of paragraph (a) shall be deleted, and this paragraph shall become part of paragraph (2). The words "raw cut tomatoes" shall be added after the words "cut melons."

(C) Paragraph (b) shall be deleted, including tables A and B.

(D) The text in paragraph (3)(c) shall be deleted and replaced with the following:

"A FOOD with an a_w value of 0.85 or less;".

(E) The text in paragraph (d) and all of paragraphs (d) (i), (ii), and (iii) shall be deleted and replaced with the following: "A FOOD with a pH level of 4.6 or below when measured at 24ºC (75ºF)."

(16) In subpart 1-201.10(B), the definition of "public water system" shall be deleted and shall be replaced by the definition of "public water supply system" in K.S.A. 65-162a, and amendments thereto.

(17) In subpart 1-201.10(B) under "ready-to-eat food" in paragraph (2) (b), the words "that are washed as specified under § 3-302.15" shall be deleted.

(18) In subpart 1-201.10(B), the definition of "refuse" shall be deleted and shall be replaced by the definition of "solid waste" in K.S.A. 65-3402, and amendments thereto.

(19) In subpart 1-201.10(B) in the definition of "regulatory authority," the word "local" and the words "or federal" shall be deleted.

(20) In subpart 1-201.10(B), the definition of "sewage" shall be deleted and shall be replaced by the definition of "sewage" in K.S.A. 65-164, and amendments thereto.

(21) In subpart 1-201.10(B), the definition of "vending machine" shall be deleted and shall be replaced by the definition of "food vending machine" in K.S.A. 36-501, and amendments thereto.

(22) In subpart 1-201.10 in the definition of "vending machine location," the word

"Food" shall be inserted before the word "Vending."

(b) As used in this article, the superscript "*" that follows the title of a section shall designate the requirements in that section as being of critical importance, unless otherwise specified within that section as follows:

(1) The superscript "^{N}" shall designate a requirement as being of noncritical importance.

(2) The superscript "^{S}" may designate a requirement as being of noncritical importance.

The term "swing" is used to describe this type of requirement. (Authorized by and implementing K.S.A. 2008 Supp. 36-507, K.S.A. 65-626, and K.S.A. 2008 Supp. 74-581; effective Feb. 29, 2008; amended June 4, 2010.)

K.A.R 4-28-9. Management and personnel. Chapter two of the 2005 "food code," published by the U.S. department of health and human services, is adopted by reference, with the following additions, deletions, and substitutions: (a) Wherever the phrase "PERMIT HOLDER" appears in this chapter, the phrase shall be deleted and shall be replaced by the word "LICENSEE."

(b) Wherever the parenthetical phrase "(TIME/TEMPERATURE CONTROL FOR SAFETY FOOD)" appears in this chapter, the phrase shall be deleted.

(c)(1) In the first sentence of subpart 2-102.11, the words "of foodborne illness" shall be added between the words "RISKS" and "inherent."

(2) Subpart 2-102.11(A) shall be deleted.

(3) Subpart 2-102.11(B) shall be redesignated as "(A)," and the words "OR APPROVED" shall be inserted after "ACCREDITED."

(4)(A) Subpart 2-102.11 (C) shall be redesignated as "(B)."

(B) In subpart 2-102.11(C)(8)(b), the word "Bare" shall be added before the word "Hand."

(C) In subpart 2.102.11, paragraph (C)(9) shall be deleted and replaced by the following paragraph:

"Describing FOODS identified as MAJOR FOOD ALLERGENS that could cause an allergic reaction in a sensitive individual."

(d) In subpart 2-102.20 at the end of the sentence, "(B)" shall be deleted and replaced by "(A)."

(e) In subpart 2-103.11(E), the word "unADULTERED" shall be deleted and replaced by the word "unadulterated."

(f) In subpart 2-201, the title "Responsibilities of Permit Holder, Person in Charge, Food Employees, and Conditional Employees" shall be deleted and replaced by the title "Responsibilities regarding diseases or medical conditions."

(g)(1) In subpart 2-201.11(A)(4) and (A)(5), the word "CONFIRMED" shall be deleted and replaced by "FOODBORNE."

(2) In subpart 2-201.11(C)(2), the word "as" between the words "serves" and "a" shall be deleted.

(h)(1) In subpart 2-201.13(I)(4)(c), the words "immune to" shall be deleted and replaced by the words "protected against."

(2) In subpart 2-201.13(I)(4)(d) - (f), the number "30" shall be deleted and replaced by the number "50."

(i) In subpart 2-301.12(B)(3), the phrase “10 to 15 seconds” shall be deleted and replaced by “20 seconds.” (Authorized by and implementing K.S.A. 36-507, K.S.A. 65-626, and K.S.A. 2007 Supp. 74-582; effective Feb. 29, 2008.)

K.A.R. 4-28-10. Food. Chapter three of the 2005 “food code,” published by the U.S. department of health and human services, is adopted by reference, with the following additions, deletions, and substitutions: (a) Wherever the phrase “PERMIT HOLDER” appears in this chapter, the phrase shall be deleted and shall be replaced by the word “LICENSEE.”

(b) Wherever the parenthetical phrase “(TIME/TEMPERATURE CONTROL FOR SAFETY FOOD)” appears in this chapter, the phrase shall be deleted.

(c) Subpart 3-301.11(D) shall be deleted.

(d) (1) Subpart 3-302.11 (A)(3) through (8) shall be deleted and replaced with the following:

“(3) Storing damaged, spoiled, or recalled FOOD being held in the FOOD ESTABLISHMENT as specified under § 6-404.11;

“(B) FOOD can be protected from cross contamination by using one or more of the following methods:

“(1) Except as specified under Subparagraph 3-501.15 (B)(2) and in ¶ (C) of this section, storing the FOOD in packages, covered containers, or wrappings;

“(2) Cleaning HERMETICALLY SEALED CONTAINERS of FOOD of visible soil before opening;

“(3) Protecting FOOD containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened; and

“(4) Separating fruits and vegetables, before they are washed as specified under § 3-302.15 from READY-TO-EAT FOOD.”

(2) In subpart 3-302.11, the existing paragraph “(B)” shall be redesignated as “(C).”

(3) In subpart 3-302.11(B), the phrase *“subparagraph (A)(4)”* shall be deleted and replaced with the phrase *“subparagraph (B)(1).”*

(e) In subpart 3-305.13, “FOOD” shall be inserted before the word “VENDING.”

(f) In subpart 3-306.12(B) and 3-501.19(B), “FOOD” shall be inserted before the word “VENDING.”

(g) In subpart 3-403.11(A), (B), and (C), the words “before service” shall be added at the end of each paragraph.

(h) In subpart 3-501.16(A)(2)(b)(ii), the phrase “Within 5 years of the REGULATORY AUTHORITY’S adoption of this code” shall be deleted and shall be replaced by “on or before September 1, 2009.”

(i) In subpart 3-501.17(A)(2)(b), the phrase “Within 5 years of the REGULATORY AUTHORITY’S adoption of this code” shall be deleted and replaced by the phrase “On or before September 1, 2009.”

(j) In subpart 3-501.19, paragraphs (C) (1) through (5) shall be deleted and replaced with the following:

“Variance shall be obtained from the REGULATORY AUTHORITY as specified in § 3-502.11 as amended by K.A.R. 4-28-10(k).”

(k) In subpart 3-502.11, the text in paragraph (F) shall be deleted and replaced with the following:

“Using time as a public health control as specified under § 3-501.19.” (Authorized by and implementing K.S.A. 36-507, K.S.A. 65-626, and K.S.A. 2007 Supp. 74-582; effective Feb. 29, 2008.)

K.A.R. 4-28-11. Equipment, utensils, and linens. Chapter four of the 2005 “food code,” published by the U.S. department of health and human services, is adopted by reference, with the following additions, deletions, and substitutions: (a) Wherever the phrase “PERMIT HOLDER” appears in this chapter, the phrase shall be deleted and replaced by the word “LICENSEE.”

(b) Wherever the parenthetical phrase “(TIME/TEMPERATURE CONTROL FOR SAFETY FOOD)” appears in this chapter, the phrase shall be deleted.

(c)(1) In subpart 4-204.14, the word “Food” shall be inserted before the word “Vending” in the title.

(2) In subpart 4-204.14, the word “FOOD” shall be inserted before the word “VENDING.”

(d) In subpart 4-204.16, the words “for human consumption” shall be added to the end of the sentence.

(e)(1) In subpart 4-204.19, the word “Food” shall be inserted before the word “Vending” in the title.

(2) In subpart 4-204.19, the word “FOOD” shall be inserted before the word “VENDING.”

(f) In subpart 4-204.110(B)(1), the phrase “as specified under § 8-103.11" shall be deleted and shall be replaced by “by the regulatory authority.”

(g)(1) In subpart 4-204.111, the word “Food” shall be inserted before the word “Vending” in the title.

(2) In subpart 4-204.111(B)(1) and (2), the word “FOOD” shall be inserted before the word “VENDING.”

(h)(1) In subpart 4-204.121, the word “Food” shall be inserted before the word “Vending” in the title.

(2) In subpart 4-204.121(A) and (B), the word “FOOD” shall be inserted before the word “VENDING.”

(i)(1) In subpart 4-204.123, the word “Food” shall be inserted before the word “Vending” in the title.

(2) In subpart 4-204.123(A) and (B), the word “FOOD” shall be inserted before the word “VENDING.”

(j) In subpart 4-301.11, the symbol “*” shall be added after the word “Capacities.” in the title, and an “S” shall be added after the phrase “Chapter 3.”

(k)(1) In subpart 4-301.12, the title “Manual Warewashing, Sink Compartment Requirements.” shall be deleted and replaced with “Warewashing Equipment Requirements.*”

(2) In subpart 4-301.12(A), the phrase “and ¶ (F)” shall be added before the words “of this section.”

(3) In subpart 4-301.12(D), the words “by the regulatory authority” shall be added after the word “APPROVED.”

(4) In subpart 4-301.12, the following paragraph shall be added after paragraph (E):

“(F) Manual warewashing sinks are not required if a mechanical warewashing machine is properly used,

operated, and maintained and the machine is large enough for washing, rinsing and SANITIZING the largest EQUIPMENT and UTENSILS."

(l)(1) In subpart 4-501.14, the word "raw" shall be deleted before the word "FOODS."

(2) In subpart 4-501.14, the words "and SANITIZED" shall be added after the word "cleaned."

(m) In subpart 4-603.16(A)(1), the word "or" shall be added at the end of the paragraph. (Authorized by and implementing K.S.A. 2008 Supp. 36-507, K.S.A. 65-626, and K.S.A. 2008 Supp. 74-581; effective Feb. 29, 2008; amended June 4, 2010.)

K.A.R. 4-28-12. Water, plumbing, and waste. Chapter five of the 2005 ''food code,'' published by the U.S. department of health and human services, is adopted by reference, with the following additions, deletions, and substitutions: (a) Wherever the phrase ''PUBLIC WATER SYSTEM'' appears in this chapter, the word ''SUPPLY'' shall be inserted before the word ''SYSTEM.''

(b) In subpart 5-103.12, the symbol ''*'' shall be added after the title ''Pressure.''

(c) In subpart 5-202.12(C), the phrase ''15 seconds'' shall be deleted and shall be replaced by the phrase "20 seconds.''

(d)(1) In subpart 5-203.11(A), the phrase ''¶¶ (B) and (C)'' shall be deleted and replaced by ''¶ (B).''

(2) Subpart 5-203.11(C) shall be deleted.

(e) In subpart 5-203.12, the following changes shall be made:

(1) The words ''and Urinals'' in the title shall be deleted.

(2) "(A)" shall be inserted before the first sentence, and the second sentence shall be deleted.

(3) The following sentence shall be inserted after the first sentence: "(B) EMPLOYEES and CONSUMERS may use the same toilet facilities provided that CONSUMERS have access to them without entering the FOOD preparation, FOOD storage, or WAREWASHING or UTENSIL storage areas of the FOOD ESTABLISHMENT."

(f) In subpart 5-401.11(A), the words ''with a minimum capacity of a 20-gallon tank'' shall be added after the word ''tank.''

(g)(1) In subpart 5-402.11(A), the phrase "¶¶ (B), (C), and (D)" shall be deleted and replaced by "¶ (B)."

(2) In subpart 5-402.11(A), the words ", portable EQUIPMENT, or UTENSILS are" shall be deleted and replaced by "is."

(3) Subparts 5-402.11(C) and (D) shall be deleted.

(h)(1) In subpart 5-501.14, the word ''Food'' shall be inserted before the phrase ''Vending Machines'' in the title.

(2) In subpart 5-501.14, ''FOOD'' shall be inserted before the word ''VENDING.'' (Authorized by and implementing K.S.A. 2008 Supp. 36-507, K.S.A. 65-626, and K.S.A. 2008 Supp. 74-581; effective Feb. 29, 2008; amended June 4, 2010.)

K.A.R. 4-28-13. Physical facilities. Chapter six of the 2005 "food code," published by the U.S. department of health and human services, is adopted by reference, with the following additions, deletions, and substitutions: (a) Wherever the phrase "PERMIT HOLDER" appears in this chapter, the phrase shall be deleted and replaced by the word "LICENSEE."

(b)(1) In subpart 6-202.15, the symbol "*" shall be added after the word "Protected." in the title.

(2) In subpart 6-202.15, an "S" shall be added at the end of each of these paragraphs: (A)(1), (2), and (3) and (D)(1), (2), and (3).

(c) In subpart 6-302.10, the words "and urinals" shall be deleted.

(d)(1) In subpart 6-501.111, the word "minimize" shall be deleted and replaced by the word "eliminate."

(2) In subpart 6-501.111(A), (B), and (D), the "N" shall be deleted and replaced with "S."

(e) In subpart 6-501.112, the symbol "*" shall be added after the word "Pests." in the title.

(f) In subpart 6-501.115, paragraphs (B)(4)(a), (b), and (c) shall be deleted, and the designation for paragraph "(5)" shall be deleted and replaced by "(4)." (Authorized by and implementing K.S.A. 36-507, K.S.A. 65-626, and K.S.A. 2007 Supp. 74-582; effective Feb. 29, 2008.)

K.A.R. 4-28-14. Poisonous or toxic materials. Chapter seven of the 2005 "food code," published by the U.S. department of health and human services, is adopted by reference. (Authorized by and implementing K.S.A. 36-507, K.S.A. 65-626, and K.S.A. 2007 Supp. 74-582; effective Feb. 29, 2008.)

K.A.R. 4-28-15. Compliance and enforcement. Chapter eight of the 2005 "food code," published by the U.S. department of health and human services, is adopted by reference, with the following additions, deletions, and substitutions: (a) Wherever the phrase "PERMIT HOLDER" appears in this chapter, the phrase shall be deleted and shall be replaced by the word "LICENSEE."

(b) Wherever the parenthetical phrase "(TIME/TEMPERATURE CONTROL FOR SAFETY FOOD)" appears in this chapter, the phrase shall be deleted.

(c) Wherever the word "PERMIT" appears in this chapter, the word shall be deleted and replaced by the word "LICENSE."

(d)(1) In subpart 8-201.11(C), the phrase "as specified under ¶ 8-302.14(C)" shall be deleted, and "; or" shall replace the period after "Code."

(2) In subpart 8-201.11, the following new paragraph shall be added after paragraph (C):

"(D) Approval of plans by the regulatory authority shall not negate the liability of the applicant to comply with the requirements of these regulations."

(e) Subparts 8-203.10, 8-302.11, 8-302.14, 8-303.20, 8-401.10, 8-402.40, and 8-501.10 shall be deleted.

(f) In subpart 8-302.13(A), the phrase “or a representative thereof” shall be added after the phrase “legal ownership.”

(g) In subpart 8-304.11(H), the words “and 5 years pass after the REGULATORY AUTHORITY adopts this Code” shall be deleted and shall be replaced by “or by September 1, 2009.”

(h) Wherever the words “PERMIT HOLDER’S” appear in this chapter, the words shall be deleted and shall be replaced by “LICENSEE’S.”

(i) In subpart 8-304.20, the paragraph shall end with a period added after the words “operation to another,” and the rest of the paragraph shall be deleted.

(j) In subpart 8-401.20, the phrase “Within the parameters specified in § 8-401.10” shall be deleted.

(k) In subpart 8-402.20, paragraph (A)(3) shall be deleted.

(l) In subpart 8-403.10(A), the phrase “and mailing” shall be deleted, and the phrase “as specified under paragraph 8-302.14(C)” shall be deleted.

(m)(1) In subpart 8-501.20(A), the words “to specific areas and tasks in a FOOD ESTABLISHMENT that present no risk of transmitting the disease” shall be added after the words “CONDITIONAL EMPLOYEE.”

(2) In subpart 8-501.20(B), the words “from a FOOD ESTABLISHMENT” shall be added after “CONDITIONAL EMPLOYEE.”

(3) In subpart 8-501.20, paragraph (C) shall be deleted and shall be replaced by the following:

“(C) Immediate closing of the food establishment, until the regulatory authority determines that no further danger of disease transmission exists.”

(n) In subpart 8-501.30, the phrase “as specified in § 8-501.10" shall be deleted. (Authorized by K.S.A. 36-507 and 65-626 and K.S.A. 2007 Supp. 65-673 and 74-582; implementing K.S.A. 36-503, 36-507, 65-626, and 65-662 and K.S.A. 2007 Supp. 65-673; effective Feb. 29, 2008.)

K.A.R. 4-28-16. Mobile food establishments, pushcarts, and temporary food establishments. (a) In addition to meeting the requirements of K.A.R. 4-28-8 through K.A.R. 4-28-15, each licensee of a mobile food establishment or a pushcart and each operator of a temporary food establishment in a retail food store shall meet the department’s requirements in “chapter 9: mobile food establishments, pushcarts, and temporary food establishments,” dated June 2007 and hereby adopted by reference.

(b) For the purpose of this regulation, “retail food store” shall include a mobile food establishment, a pushcart, and a temporary food establishment if the mobile food establishment, pushcart, or temporary food establishment is located on the premises of the retail food store. (Authorized by K.S.A. 36-507 and 65-626; implementing K.S.A. 36-507 and 65-626 and K.S.A. 2006 Supp. 74-581; effective Feb. 29, 2008.)

K.A.R. 4-28-18. Guaranty; definition. (a) A guaranty of undertaking referred to in K.S.A. 65-659(b), and amendments thereto, may be either of the following:

(1) Limited to a specific shipment or other delivery of an article, in which case the guaranty of undertaking may be a part of or attached to the invoice or bill of sale covering the shipment or delivery; or

(2) general and continuing, in which case the guaranty of undertaking shall apply to any shipment or other delivery of an article. The guaranty of undertaking shall be deemed to be effective from the date the article was shipped or delivered by the person giving the guaranty of undertaking.

(b) Each limited guaranty of undertaking shall contain the following information:

(1) The name of the person giving the guaranty of undertaking, followed by “hereby guarantees that no article listed herein is adulterated or misbranded within the meaning of the Kansas food, drug and cosmetic act, K.S.A. 65-619 et seq., and amendments thereto”;

(2) the name of the article or articles for which the guaranty of undertaking is issued;

(3) the signature of the person giving the guaranty of undertaking;

(4) the date the guaranty of undertaking was signed; and

(5) the street address of the person giving the guaranty of undertaking.

(c) Each general and continuing form of guaranty of undertaking shall contain the following information:

(1) The name and street address of the person giving the guaranty of undertaking;

(2) the name and street address of the person to whom the guaranty of undertaking is given;

(3) the date the guaranty of undertaking is issued;

(4) the name of the article or articles for which the guaranty of undertaking is issued;

(5) a statement that the article comprising each shipment or other delivery made by the person giving the guaranty of undertaking is guaranteed, on the date of the shipment or delivery, not to be adulterated or misbranded within the meaning of the Kansas food, drug and cosmetic act, K.S.A. 65-619 et seq. and amendments thereto; and

(6) the signature of the person giving the guaranty of undertaking.

(d) The application of a guaranty of undertaking referred to in K.S.A. 65-659 (b), and amendments thereto, to any shipment or other delivery of an article shall expire if the article, after shipment or delivery by the person who gave the guaranty of undertaking, becomes adulterated or misbranded within the meaning of the Kansas food, drug and cosmetic act, K.S.A 65-619 et seq. and amendments thereto.

(e) Each guaranty of undertaking signed by two or more persons shall state that the persons severally guarantee the article to which the guaranty of undertaking applies.

(f) No representation or suggestion that an article is guaranteed under the Kansas food, drug and cosmetic act, K.S.A. 65-619 et seq. and amendments thereto, shall be made in that article's labeling. (Authorized by K.S.A. 65-673 and K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-659; effective June 4, 2010.)

K.A.R. 4-28-19. Definitions and standards of identity for miscellaneous beef products. (a) "Cheek meat" shall mean the trimmed cheeks of the carcass of cattle.

(b)(1) "Chopped beef" and "ground beef" shall mean chopped or ground, fresh or frozen skeletal muscle of cattle without the addition of fat and with or without seasoning.

(2) Chopped beef and ground beef shall not contain added beef fat, water, binders, extenders, hearts, tongues, or muscle of the esophagus.

(3) Chopped beef and ground beef shall not contain more than 30% fat by laboratory analysis.

(4) If cheek meat is used in the preparation of chopped beef or ground beef, the amount of cheek meat shall be limited to 25%. If the amount of cheek meat exceeds the natural proportion of cheek meat present on the whole carcass, its presence shall be declared on the label in the ingredient statement required by K.S.A. 65-665 (i), and amendments thereto, if any, and otherwise contiguous to the name of the product.

(c)(1) "Hamburger" shall mean chopped or ground, fresh or frozen skeletal muscle of cattle, with or without the addition of beef fat or seasoning.

(2) Hamburger shall not contain added beef fat, water, binders, extenders, hearts, tongues, or muscle of the esophagus.

(3) Hamburger shall not contain more than 30% fat by laboratory analysis.

(4) If cheek meat is used in the preparation of hamburger, the amount of cheek meat shall be limited to 25%. If the amount of cheek meat exceeds the natural proportion of cheek meat present on the whole carcass, its presence shall be declared on the label in the ingredient statement required by K.S.A. 65-665 (i), and amendments thereto, if any, and otherwise contiguous to the name of the product.

(d) "Beef pattie" shall meet the requirements of K.A.R. 4-16-1c. A beef pattie may be breaded in accordance with K.A.R. 4-28-22, in which case the product shall be labeled "breaded beef pattie," "breaded chopped beef pattie," "breaded ground beef pattie," or "breaded hamburger pattie" and the breading ingredients shall be shown on the label.

(e) "Steak" shall mean a single slice of fresh or frozen, lean skeletal muscle of cattle with naturally accompanying fat and, in certain cuts, including T-bone, round, club, and rib, the naturally accompanying bone. The term "steak" shall not be used in describing any meat product or meat food product that is a beef pattie in composition or appearance.

(f)(1) "Fabricated steak" shall meet the requirements of K.A.R. 4-16-1c.

(2) If cheek meat is used in the preparation of fabricated steak, the amount of cheek meat shall be limited to 25%. If the amount of cheek meat exceeds the natural proportion of cheek meat present on the whole carcass, its presence shall be declared on the label in the ingredient statement required by K.S.A. 65-665 (i), and amendments thereto, if any, and otherwise contiguous to the name of the product.

(3) This product may be breaded in accordance with K.A.R. 4-28-22, in which case the word "breaded" shall immediately precede the name of the product in type of uniform size and prominence and the breading ingredients shall be shown on the label.

(g) "Partially defatted beef fatty tissue" shall mean a beef by-product derived from the low-temperature rendering, not exceeding 120°F, of fresh beef fatty tissue. This product shall have a pinkish color and a fresh odor and appearance. (Authorized by K.S.A. 65-663, K.S.A. 2008 Supp. 65-673, and K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-663; effective June 4, 2010.)

K.A.R. 4-28-20. Definitions and standards of identity for miscellaneous meat food products. (a)(1) Meat food patties with additives. "Meat food patties with additives" shall contain specific meats, including beef, veal, lamb, pork, poultry, or various combinations of these meats, in their formulation. Meat food patties with additives shall not contain more than 30% fat by laboratory analysis.

(2) If water is added to facilitate chopping and mixing the ingredients, the amount of water shall be limited to 10% of the formulation ingredients specified in this subsection.

(3)(A) If one or more of the following binders or extenders are used, the total amount of binders or extenders shall be limited to 3 1/2% of the total ingredients in the pattie: dried milk, nonfat dry milk, calcium reduced dried skim milk, cereal, vegetable starch, starchy vegetable flour, soy flour, and soy protein concentrate.

(B) If isolated soy protein is used as a binder or extender, the total amount shall be limited to 2% of the total ingredients in the pattie.

(4) Meat food patties with additives may contain seasoning, partially defatted beef fatty tissues, or partially defatted pork fatty tissues.

(5) The product's finished characteristics shall be essentially those of a meat pattie. All ingredients shall be listed on required labeling contiguous to the product name.

(b) Nonspecific meat food patties. Each pattie prepared with binders or extenders not specified in subsection (a), or containing binders or extenders in excess of 3 1/2%, shall contain at least 70% meat in its formulation and no more than 30% fat by laboratory analysis. All ingredients shall be listed on required labeling contiguous to the product name.

(c) Cooked patties. If patties are cooked or partially cooked, the composition of the raw mix from which the patties were prepared shall be used in determining whether the patties meet the requirements of this regulation.

(Authorized by K.S.A. 65-663, K.S.A. 2008 Supp. 65-673, and K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-663; effective June 4, 2010.)

K.A.R. 4-28-21. Definitions and standards of identity for miscellaneous pork products. (a) "Partially defatted pork fatty tissue" shall mean a pork by-product derived from the low-temperature rendering, not exceeding 120°F, of fresh pork fatty tissue. This product shall have a pinkish color and a fresh odor and appearance.

(b)(1) "Pork tenderloin tender" shall be prepared from fresh psoas muscle found on each side of the vertebral column of hogs. This product may be labeled "pork tenderloin" or "pork tender."

(2) This product may be breaded in accordance with K.A.R. 4-28-22, in which case the product shall be labeled "breaded pork tenderloin" or "breaded pork tender" and the breading ingredients shall be shown on the label. If the product is breaded, the product shall be treated for control of trichinae.

(c) "Pork pattie" shall consist of chopped or ground skeletal muscle of hogs, either fresh or frozen, and shall not contain added water, binders, extenders, or more than 40% actual fat. The product shall be labeled "pork pattie" and may be breaded in accordance with K.A.R. 4-28-22, in which case the product shall be labeled "breaded pork pattie" and the breading ingredients shall be shown on the label. If the product is breaded, the product shall be treated for control of trichinae.

(d) "Pork steak" shall mean a single slice of fresh or frozen, lean skeletal muscle of hogs with the naturally accompanying fat and, in certain cuts, the naturally accompanying bone. The term "steak" shall not be used in describing any meat product or meat food product that is essentially a pork pattie in composition or appearance.

(e) "Pork cutlet" shall consist of thin slices of pork meat flattened and knitted together in cutlet-size products by means of cubing, frenching machines, or hand pounding with cubing hammers. The product shall be labeled with the word "cutlet" in type of uniform size and prominence. A pork cutlet may be identified as sliced pork meat if the product name on the label clearly states the specific part of the carcass from which the meat in the product is derived, which may include "pork loin cutlets." (Authorized by K.S.A. 65-663, K.S.A. 2008 Supp. 65-673, and K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-663; effective June 4, 2010.)

K.A.R. 4-28-22. Breaded products. (a) Unless otherwise specified in this article, the amount of batter and breading used as a coating for any breaded product shall not exceed 30% of the weight of the finished breaded product. The word "breaded" shall be included in the product name.

(b) Each "fritter" shall contain at least 35% raw meat or poultry in the total formulation. Any fritter may contain not more than 65% batter and breading. The word "fritter" shall be included in the product name. If the word "breaded" is included in the product name, the batter and breading shall be limited to 30%. (Authorized by K.S.A. 65-663, K.S.A. 2008 Supp. 65-673, and K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-663; effective June 4, 2010.)

K.A.R. 4-28-23. Sidewalk or street display of food products; prohibitions. (a) The sidewalk or street display or sale of fresh meat and meat products, fresh seafood and fish, and fresh poultry shall be prohibited. Frozen meat and meat products, seafood and fish, and poultry shall be maintained frozen and meet the requirements of K.A.R. 4-28-8 through 4-28-16.

(b) Any food product, other than those products listed in subsection (a), that ordinarily is washed, peeled, pared, or cooked in the course of preparation for consumption may be displayed in street and sidewalk displays if the product is in containers that are at least six inches above the surface of the sidewalk or street.

(c) The street or sidewalk display of all food products not specified in this regulation shall be prohibited unless the products are enclosed in glass cases or otherwise enclosed to protect the products from flies, dust, and other contamination. (Authorized by K.S.A. 65-626, K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-625 and 65-626; effective June 4, 2010.)

K.A.R. 4-28-24. Rooms where food is handled. (a) No room where food is handled shall be used for any purposes other than those directly connected with the preparing, baking, storage, and handling of food. No room where food is handled shall be used as a washing, sleeping, or living room. Each room where food is handled shall, at all times, be separated and closed from the washing, living, and sleeping rooms.

(b) One or more rooms separate from the room where food is handled shall be provided for the changing and hanging of wearing apparel. Each room used for the changing and hanging of wearing apparel shall be kept clean at all times. (Authorized by K.S.A. 65-626, K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-625 and 65-626; effective June 4, 2010.)

K.A.R. 4-28-25. Temperature requirements. (a) The refrigeration system for each frozen food locker plant shall be equipped to maintain uniform temperatures. This subsection shall not apply to locker plants having constant temperature supervision. Temperatures shall be maintained in the respective rooms as follows:

(1) In each chill or aging room, temperatures of 37°F or lower with a tolerance of 10° for a reasonable time after fresh food is placed in the chill room;

(2) in each sharp-freeze room and sharp-freeze compartments, temperatures of -10°F or lower in rooms where still-air cooling is employed and temperatures of 0° or lower in rooms where forced air circulation is employed, with a tolerance of 10° for either type of installation for a reasonable time after putting fresh food into the freezer; and

(3) in each locker room, temperatures of 0°F or lower.

(b) Each chill room, sharp-freeze room, and locker room shall be equipped with an accurate temperature-

reading device. (Authorized by K.S.A. 65-626, K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-625 and 65-626; effective June 4, 2010.)

K.A.R. 4-28-26. Means for cleansing and sterilizing tools and equipment. Each frozen food locker plant shall be provided with adequate means for washing and sterilizing tools and other equipment. An adequate supply of potable water shall be provided. If hot running water is not available, a means of heating water shall be provided. (Authorized by K.S.A. 65-626, K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-625 and 65-626; effective June 4, 2010.)

K.A.R. 4-28-27. Toilet and handwashing facilities. (a) The owner or operator of each frozen food locker plant shall provide the following at the plant:

(1) At least one working toilet;

(2) handwashing sinks located for convenient use by employees in food handling and warewashing areas and in or immediately adjacent to the toilet rooms; and

(3) clean, individual, disposable towels at each handwashing sink.

(b) Each person handling food products in the frozen food locker plant shall be required to wash that person's hands after using the toilet. (Authorized by K.S.A. 65-626, K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-625 and 65-626; effective June 4, 2010.)

K.A.R. 4-28-28. Inspection by plant operator. All food products shall be subject to the inspection of the operator of the frozen food locker plant. All meat products showing any sign of disease or decomposition shall be rejected for storage. All vegetable or fruit products showing any sign of decomposition or infestation of insects, rodents, and other pests shall be rejected for storage. (Authorized by K.S.A. 65-626, K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-625 and 65-626; effective June 4, 2010.)

K.A.R. 4-28-29. Products to be frozen before storage. All food products shall be completely frozen before being stored in lockers. (Authorized by K.S.A. 65-626, K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-625 and 65-626; effective June 4, 2010.)

K.A.R. 4-28-30. Place for processing. If the owner or operator of a frozen food locker plant processes food at the plant, all processing shall be done in an enclosed or semienclosed place that is used only for processing foods and is not accessible to persons who are not engaged in the processing of foods for storage at the frozen food locker plant. (Authorized by K.S.A. 65-626, K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-625 and 65-626; effective June 4, 2010.)

Food, Drugs and Cosmetics

K.A.R. 28-21-2. Difference of opinion among experts. The existence of a difference of opinion, among experts qualified by scientific training and experience, as to the truth of a representation made or suggested in the labeling is a fact (among other facts) the failure to reveal which may render the labeling misleading, if there is a material weight of opinion contrary to such representation. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

K.A.R. 28-21-4. Guaranty; definition, and suggested forms. (a) A guaranty or undertaking referred to in K.S.A. 65-659 (b) may be:

(1) Limited to a specific shipment or other delivery of an article, in which case it may be a part of or attached to the invoice or bill of sale covering such shipment or delivery, or

(2) General and continuing, in which case, in its application to any shipment or other delivery of an article, it shall be considered to have been given at the date such article was shipped or delivered by the person who gives the guaranty or undertaking.

(b) The following are suggested forms of guaranty or undertaking under K.S.A. 65-659 (b):

(1) Limited form for use on invoice or bill of sale:

(Name of person giving the guaranty or undertaking) hereby guarantees that no article listed herein is adulterated or misbranded within the meaning of the Kansas food, drug and cosmetic act.)

(Signature and post-office address of person giving the guaranty or undertaking.)

(2) General and continuing form:

The article comprising each shipment or other delivery hereafter made by (name of person giving the guaranty or undertaking) to, or on the order of (name and post-office address of person to whom the guaranty or undertaking is given) is hereby guaranteed, as of the date of such shipment or delivery, to be, on such date, not adulterated or misbranded within the meaning of the Kansas food, drug and cosmetic act.

(Signature and post-office address of person giving the guaranty or undertaking.)

(c) The application of a guaranty or undertaking referred to in K.S.A. 65-659 (b) to any shipment or other delivery of an article shall expire when such article, after shipment or delivery by the person who gave such guaranty or undertaking, becomes adulterated or misbranded within the meaning of the act.

(d) A guaranty or undertaking, if signed by two or more persons, shall state that such persons severally guarantee the article to which it applies.

(e) No representation or suggestion that an article is guaranteed under the act shall be made in labeling. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

K.A.R. 28-21-5. Food; labeling; misbranding. (a) Among representations in a labeling of a food which render such food misbranded is a false or misleading representation with respect to another food or a drug, device, or cosmetic.

(b) The labeling of a food which contains two or more ingredients may be misleading by reason (among other reasons) of the designation of such food in such labeling by a name which includes or suggests the name of one or more but not all such ingredients, even though the names of all such ingredients are stated elsewhere in the labeling. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

Drugs and Therapeutic Devices

K.A.R. 28-21-200. Drugs; name. (a) The name by which a drug is designated shall be clearly distinguishing and differentiating from any name recognized in an official compendium unless such drug complies in identity with the identity prescribed in an official compendium under such recognized name.

(b) The term ''drug defined in an official compendium'' means a drug having the identity prescribed for a drug in an official compendium.

(c) A statement that a drug defined in an official compendium differs in strength, quality, or purity from the standard of strength, quality, or purity set forth for such drug in an official compendium shall show all the respects in which such drug so differs, and the extent of each such difference. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

K.A.R. 28-21-201. Drugs and devices; labeling, misbranding. (a) Among representations in the labeling of a drug or device which render such drug or device misbranded is a false or misleading representation with respect to another drug or device or a food or cosmetic.

(b) The labeling of a drug which contains two or more ingredients may be misleading by reason (among other reasons) of the designation of such drug in such labeling by a name which includes or suggests the name of one or more but not all such ingredients, even though the names of all such ingredients are stated elsewhere in the labeling. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

K.A.R. 28-21-202. Drugs and devices; labeling requirements. (a) If a drug or device is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase which reveals the connection such person has with such drug or device, such as “manufactured for and packed by_____,” “distributed by _____,” or other similar phrase which expresses the facts.

(b) The statement of the place of business shall include the street address, if any, of such place, unless such street address is shown in a current city directory or telephone directory.

(c) Where a person manufactures, packs, or distributes a drug or device at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where each package of such drug or device was manufactured or packed or is to be distributed, if such statement is not misleading in any particular.

(d) The requirement that the label shall contain the name and place of business of the manufacturer, packer, or distributor shall not be considered to relieve any drug or device from the requirement that its label shall not be misleading in any particular.

(e) (1) The statement of the quantity of the contents of a package of a drug shall reveal the quantity of such drug in the package, exclusive of wrappers and other material packed with such drug.

(2) The statement shall be expressed in the terms of weight, measure, numerical count, or a combination of numerical count and weight or measure, which are generally used by consumers and users of such drug to express quantity thereof and which give accurate information as to such quantity. But if no general usage in expressing accurate information as to the quantity of such drug exists among consumers and users thereof, the statement of the quantity of a drug which is not in tablet, capsule, ampule, or other unit form shall be in terms of weight if the drug is solid, semisolid, or viscous, or in terms of measure if the drug is liquid; the statement of the quantity of a drug which is in such unit form shall be in terms of the numerical count of such units, supplemented, when necessary to give accurate information as to the quantity of such drug in the package, by such statement (in such terms, manner, and form as are not misleading) of the weight or measure of such units, or of the quantity of each active ingredient in each such unit, as will give such information.

(3) The statement of the quantity of a device shall be expressed in terms of numerical count.

(f) A statement of weight shall be in terms of the avoirdupois pound, ounce, and grain, or of the kilogram, gram, and milligram. A statement of liquid measure shall be in terms of the United States gallon of 231 cubic inches and quart, pint, fluid ounce, and fluid dram subdivisions thereof, or of the liter, milliliter, or cubic centimeter, and shall express the volume at 68 Fahrenheit (20 centigrade).

(g) Statements of the quantity of a drug shall contain only such fractions as are generally used in expressing the

quantity of such drug. A common fraction shall be reduced to its lowest terms; a decimal fraction shall not be carried out to more than three places, except in the case of a statement of the quantity of an active ingredient in a unit of a drug.

(h) (1) Unless made in accordance with the provisions of subparagraph (2) of this paragraph, a statement of the quantity of a drug, in the terms of weight or measure applicable to such drug under the provisions of paragraph (e) (2) of this section, shall express the number of the largest unit specified in paragraph (f) of this section which is contained in the package (for example, the statement of the label of a package which contains one pint of a drug shall be "1 pint," and not "16 fluid ounces"). Where such number is a whole number and a fraction, there may be substituted for the fraction its equivalent in smaller units, if any smaller is specified in such paragraph (f) (for example, 11.4 pounds may be expressed as "1 pound 4 ounces"). The stated number of any unit which is smaller than the largest unit (specified in such paragraph [f]) contained in the package shall not equal or exceed the number of such smaller units in the next larger unit so specified (for example, instead of "1 quart 16 fluid ounces" the statement shall be "11.2 quarts" or "1 quart 1 pint").

(2) In the case of a drug with respect to which there exists an established custom of stating the quantity of the contents as a fraction of a unit, which unit is larger than the quantity contained in the package, or as units smaller than the largest unit contained therein, the statement may be made in accordance with such custom if it is informative to consumers.

(i) The statement of the quantity of a drug or device shall express the minimum quantity, or the average quantity, of the contents of the packages. If the statement is not so qualified as to show definitely that the quantity expressed is the minimum quantity, the statement, except in the case of ampuls, shall be considered to express the average quantity. The statement of the quantity of a drug in ampuls shall be considered to express the minimum quantity.

(j) Where the statement expresses the minimum quantity, no variation below the stated minimum shall be permitted except variations below the stated weight or measure of a drug caused by ordinary and customary exposure, after such drug is introduced into commerce, to conditions which normally occur in good distribution practice and which unavoidably result in decreased weight or measure. Variations above the stated minimum shall not be unreasonably large. In the case of a liquid drug in ampuls the variation above the stated measure shall comply with the excess volume prescribed by the national formulary for filling of ampuls.

(k) Where the statement does not express the minimum quantity:

(1) Variations from the stated weight or measure of a drug shall be permitted when caused by ordinary and customary exposure, after such drug is introduced into commerce, to conditions which normally occur in good distribution practice and which unavoidably result in change of weight or measure;

(2) Variations from the stated weight, measure, or numerical count of a drug or device shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting the contents of individual packages which occur in good packing practice. But under subparagraph (2) of this paragraph variations shall not be permitted to such extent that the average of the quantities in the packages comprising a shipment or other delivery of the drug or device is below the quantity stated and no unreasonable shortage in any package shall be permitted, even though overages in other packages in the same shipment or delivery compensate for such shortage.

(l) The extent of variations from the stated quantity of the contents permissible under paragraphs (j) and (k) of this regulation in the case of each shipment or under delivery shall be determined by the facts in such case.

(m) A drug or device shall be exempt from compliance with the requirements of clause (2) of K.S.A. 65-669 (b):

(1) The statement of the quantity of the contents, as expressed in terms applicable to such drug or device under the provisions of paragraph (e) (2) of this section, together with all other words, statements, and information required by or under authority of the act to appear on the label of such drug or device, cannot, because of insufficient label space, be so placed on the label as to comply with the requirements of K.S.A. 65-669 (c) and regulations promulgated thereunder, or (2) The quantity of the contents of the package, as expressed in terms of the numerical count in compliance with paragraph (e) (2) or (3) of this section, is less than six units, and such units can be easily counted without opening the package, or

(3) It is an ointment, is labeled "sample" or "physician's sample," or with a substantially similar statement, and the contents of the package do not weigh more than eight grams. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

K.A.R. 28-21-203. Drugs and devices; forms of making required statements. (a) A word, statement, or other information required by or under authority of the act to appear on the label may lack that prominence and conspicuousness required by K.S.A. 65-669 (c) by reason (among other reasons) of:

(1) The failure of such word, statement, or information to appear on the part or panel of the label which is presented or displayed under customary conditions of purchase;

(2) The failure of such word, statement, or information to appear on two or more parts or panels of the label, each of which has sufficient space therefor, and each of which is so designed as to render it likely to be, under customary conditions of purchase, the part or panel displayed;

(3) The failure of the label to extend over the area of the container or package available for such extension, so as to provide sufficient label space for the prominent placing of such word, statement, or information;

(4) Insufficiency of label space (for the prominent placing of such word, statement, or information) resulting from the use of label space for any word, statement, design, or device which is not required by or under authority of the act to appear on the label;

(5) Insufficiency of label space (for the prominent placing of such word, statement, or information) resulting from the use of label space to give materially greater conspicuousness to any other word, statement, or information, or to

any design or device; or

(6) Smallness or style of type in which such word, statement, or information appears, insufficient background contrast obscuring designs or vignettes, or crowding with other written, printed, or graphic matter.

(b) No exemption depending on insufficiency of label space, as prescribed in regulations promulgated under K.S.A. 65-669 (b) or (e) shall apply if such insufficiency is caused by:

(1) The use of label space for any word, statement, design, or device which is not required by or under authority of the act to appear on the label;

(2) The use of label space to give greater conspicuousness to any word, statement, or other information than is required by K.S.A. 65-669 (c); or

(3) The use of label space for any representation in a foreign language.

(c) (1) All words, statements, and other information required by or under authority of the act to appear on the label or labeling shall appear thereon in the English language.

(2) If the label contains any representation in a foreign language, all words, statements, and other information required by or under authority of the act to appear on the label shall appear thereon in the foreign language.

(3) If the labeling contains any representation in a foreign language, all words, statements, and other information required by or under authority of the act to appear on the label or labeling shall appear on the labeling in the foreign language. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

K.A.R. 28-21-204. Habit-forming drugs; label requirements. (a) (1) The name of a substance or derivative required to be borne on the label of a drug by K.S.A. 65-669 (d) shall be the common or usual name of such substance or derivative, unless it is designated solely by a name recognized in an official compendium and such designation complies with the provisions of K.S.A. 65-669 (c).

(2) A statement on the label of a drug of the name of a constituent, which constituent is a chemical derivative of a substance named in K.S.A. 65-669 (d), shall show the substance from which such constituent is derived and that such constituent is a derivative thereof.

(b) If the drug is in tablet, capsule, ampul, or other unit form, the statement of the quantity or proportion of such substance or derivative contained therein shall express the weight or measure of such substance or derivative in each such unit. If the drug is not in such unit form the statement shall express the weight or measure of such substance or derivative in a specified unit of weight or measure of the drug. Such statement shall be in terms which are informative to the ordinary consumer and user of the drug.

(c) The names and quantities or proportions of all such substances and derivatives, and the statement “warning--may be habit forming,” shall immediately follow (without intervening written, printed, or graphic matter) the name by which such drug is titled in the part or panel of the label thereof which is presented or displayed under customary conditions of purchase.

(d) A drug shall not be considered to be misbranded by reason of failure of its label to bear the statement “warning--may be habit forming”:

(1) If such drug is not suitable for internal use, and is distributed and sold exclusively for such external use as involves no possibility of habit formation; or

(2) If the only substance or derivative subject to K.S.A. 65-669 (d) contained in such drug is chlorobutanol, which is present solely as a preservative and in a quantity not more than 0.5 percent by weight, and such drug is for parenteral use only; or

(3) If the only substance or derivative subject to K.S.A. 65-669 (d) contained in such drug is chlorobutanol, which is present as an analgesic or as an analgesic and a preservative in a quantity not more than 3.0 percent, and such drug contains one or more other active ingredients and is for parenteral use only. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

K.A.R. 28-21-205. Drugs; statement of ingredients and proportion. (a) (1) The name of an ingredient, substance, derivative, or preparation required by K.S.A. 65-669 (e) (1) (ii) to be borne on the label of a drug shall be the name thereof, which is listed in K.S.A. 65-669 (e) (1) (ii), or, if not so listed, shall be a specific name and not a collective name. But if an ingredient is an article the name of which is recognized in an official compendium and such article complies with the specifications set forth therefor in such compendium, such ingredient may be designated on the label of such drug by the common or usual name under which such specifications are so set forth.

(2) Where an ingredient contains a substance the quantity or proportion of which is required by K.S.A. 65-669 (e) (1) (ii) to appear on the label, and such ingredient is not a derivative or preparation of such substance as defined in paragraph (b) (1) of this section, the label shall bear, in conjunction with the name of the ingredient, a statement of the quantity or proportion of such substance in such drug.

(3) An abbreviation or chemical formula shall not be considered to be a common or usual name. The name “acetophenetidin” shall be considered to be the same as the name “acetphenetidin,” “aminopyrine” the same as “amidopyrine” The name “alcohol” without qualification, means ethyl alcohol.

(b) (1) A derivative or preparation of a substance named in K.S.A. 65-669 (e) (1) (ii) is an article which is derived or prepared from such substance by any method, including actual or theoretical chemical action.

(2) A statement on the label of a drug of the name of an ingredient thereof, which ingredient is a derivative or preparation of a substance named in K.S.A. 65-669 (e) (1) (ii), shall show the substance from which such ingredient is derived or prepared and that such ingredient is a derivative or preparation thereof.

(c) (1) If the drug is in tablet, capsule, ampul, or other unit form, the statement of the quantity or proportion of a substance, derivative, or preparation contained therein shall express the weight or measure of such substance,

derivative, or preparation in each such unit. If the drug is not in such unit form the statement shall express the weight or measure of such substance, derivative, or preparation in a specified unit of weight or measure of the drug, or the percentage of such substance, derivative, or preparation in such drug. Such statement shall be in terms which are informative to the ordinary consumer and user of the drug.

(2) A statement of the percentage of alcohol shall express the percentage of absolute alcohol at 60° Fahrenheit (15.56° Centigrade). A statement of the percentage of a substance, derivative, or preparation other than alcohol shall express the percentage by weight; except that if both the substance, derivative, or preparation and the drug containing it are liquid, the statement may express the percentage by volume at 68° Fahrenheit (20° Centigrade), but in such case the statement shall be so qualified as to show definitely that the percentage is expressed by volume.

(d) In case a statement of the quantity or proportion of a derivative or preparation in a drug is not as informative, to consumers or users of such drug, of the activity or consequences of use thereof as a statement of the quantity or proportion of the substance from which such derivative or preparation is derived or prepared, the quantity or proportion of such substance shall also be stated on the label of such drug.

(e) A label of a drug may be misleading by reason (among other reasons) of:

(1) The order in which the names of ingredients, substances, derivatives, or preparations appear thereon, or the relative prominence otherwise given such names; or

(2) Its failure to reveal the proportion of, or other fact with respect to, an ingredient, substance, derivative, or preparation, when such proportion or other fact is material in the light of the representation that such ingredient, substance, derivative, or preparation is a constituent of such drug.

(f) (1) A drug shall be exempt from the requirements of clause (1) (ii) of K.S.A. 65-669 (e) if all words, statements, and other information required by or under authority of the act to appear on the label of such drug, cannot, because of insufficient label space, be so placed on the label as to comply with the requirements of K.S.A. 65-669(c) and regulations promulgated thereunder. But such exemption shall be on the condition that, if the omission from the label of the statement of the quantity of the contents affords sufficient space to state legibly thereon all the information required by such clause (1) (ii), such statement of the quantity of the contents shall be omitted as authorized by paragraph (m) of regulation 28-21-202 and the information required by such clause (1) (ii) shall be so stated as prominently as practicable even though the statement is not of such conspicuousness as to render it likely to be read by the ordinary individual under customary conditions of purchase.

(2) A drug shall be exempt from the requirements of clause (1) (ii) of K.S.A. 65-669 (e) with respect to the alkaloids atropine, hyoscine or hyoscyamine contained in such drug, if such alkaloid is contained therein as a constituent of belladonna, hyoscyamus, scopola, stramonium, or other plant material, or any preparation thereof, which was used as an ingredient of such drug, and no practical and accurate method of analysis exists for the quantitative determination of each such alkaloid in such ingredient. But such exemptions shall be on the condition that the label of such drug shall state the quantity or proportion of total alkaloids contained therein as constituents of such ingredient. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

K.A.R. 28-21-206. Drugs and devices; directions for use. (a) *Adequate directions for use*. "Adequate directions for use" means directions under which the layman can use a drug or device safely and for the purposes for which it is intended. Directions for use may be inadequate because (among other reasons) of omission, in whole or in part, or incorrect specifications of:

(1) Statements of all conditions, purposes, or uses for which such drug or device is intended, including conditions, purposes, or uses for which it is prescribed, recommended, or suggested in its oral, written, printed, or graphic advertising, and conditions, purposes, or uses for which the drug or device is commonly used; except that such statements shall not refer to conditions, uses, or purposes for which the drug or device can be safely used only under the supervision of a practitioner licensed by law and for which it is advertised solely to such practitioner.

(2) Quantity of dose (including usual quantities for each of the uses for which it is intended and usual quantities for persons of different ages and different physical conditions).

(3) Frequency of administration or application.

(4) Duration of administration or application.

(5) Time of administration or application (in relation to time of meals, time of onset of symptoms, or other time factors).

(6) Route or method of administration or application.

(7) Preparation for use (shaking, dilution, adjustment of temperature, or other manipulation or process).

(b) *Exemption for prescription drugs*. A drug subject to the requirements of K.S.A. 65-669 (q) shall be exempt from K.S.A. 65-669 (f) (1) if all the following conditions are met:

(1) The drug is: (I) in the possession of a person (or his agents or employees) regularly and lawfully engaged in the manufacture, transportation, storage, or wholesale distribution of prescription drugs; or (II) in the possession of a retail, hospital, or clinic pharmacy, or a public health agency, regularly and lawfully engaged in dispensing prescription drugs; and is to be dispensed in accordance with K.S.A. 65-669 (q).

(2) The label of the drug bears:

(I) The statement "Caution: Federal law prohibits dispensing without prescription;" and

(II) the recommended or usual dosage; and

(III) the route of administration, if it is not for oral use; and

(IV) if it is fabricated from two or more ingredients and is not designated conspicuously by a name recognized in an official compendium, the quantity or proportion of each active ingredient, and if it is not for oral use the names of all other ingredients. *Provided, however*, That the information referred to in subdivisions (II), (III), and (IV) of this

subparagraph may be contained in the labeling on or within the package from which it is to be dispensed, and, in the case of ampuls too small or otherwise unable to accommodate a label but which are packaged in a container from which they are withdrawn for dispensing or use, the information referred to in subdivision (I) of this subparagraph may be placed on the outside container only.

(3) The labeling of the drug (which may include brochures readily available to licensed practitioners) bears information as to the use of the drug by practitioners licensed by law to administer it: *Provided, however*, That such information may be omitted from the labeling if it is contained in scientific literature widely disseminated among practitioners licensed by law to administer the drug.

(c) *Exemption for veterinary drugs*. A drug intended solely for veterinary use which, because of toxicity or other potentiality for harmful effect, or the method of its use, is not safe for animal use except under the supervision of a licensed veterinarian, and hence for which "adequate directions for use" cannot be prepared, shall be exempt from K.S.A. 65-669 (f) (1) if all the following conditions are met:

(1) The drug is in the possession of a person (or his agents or employees) regularly and lawfully engaged in the manufacture, transportation, storage, or wholesale or retail distribution of veterinary drugs and is to be sold only to or on the prescription or other order of a licensed veterinarian for use in the course of his professional practice.

(2) The label of a drug bears:

(I) The statement "Caution: Federal law restricts this drug to sale by or on the order of a licensed veterinarian"; and

(II) the recommended or usual dosage; and

(III) the route of administration, if it is not for oral use; and

(IV) the quantity or proportion of each active ingredient if it is fabricated from two or more ingredients and is not designated conspicuously by a name recognized in an official compendium. *Provided, however*, That the information referred to in subdivisions (II), (III), and (IV) of this subparagraph may be contained in the labeling on or within the package from which it is to be dispensed.

(3) The labeling of the drug (which may include brochures readily available to licensed veterinarians) bears information as to use of the drug by licensed veterinarians: Provided, however, That such information may be omitted from the labeling if it is contained in scientific literature widely disseminated among veterinarians licensed by law to administer such drug.

(d) *Exemption for prescription devices*. A device which, because of any potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed by law to direct the use of such device, and hence for which "adequate directions for use" cannot be prepared, shall be exempt from K.S.A. 65-669 (f) (1) if all the following conditions are met:

(1) The device is in the possession of a person (or his agents or employees) regularly and lawfully engaged in the manufacture, transportation, storage, or wholesale or retail distribution of such device and is to be sold only to or on the prescription or other order of such practitioner for use in the course of his professional practice.

(2) The label of the device (other than surgical instruments) bears:

(I) The statement "Caution: Federal law restricts this device to sale by or on the order of a _____," the blank to be filled with the word "physician," "dentist," "veterinarian," or with the descriptive designation of any other practitioner licensed by the law of Kansas; and

(II) the method of its application or use.

(3) The labeling of the device (which may include brochures readily available to licensed practitioners) bears information as to the use of the device by practitioners licensed by law to use it or direct its use: *Provided, however*, That such information may be omitted from the labeling if it is contained in scientific literature widely disseminated among practitioners licensed by law to use or order the use of such device.

(e) *Exemptions for drugs and devices shipped directly to licensed practitioners, hospitals, clinics, or public-health agencies for professional use*. Except as provided in paragraph (g) of this section, a drug or device shipped directly to or in the possession of a practitioner licensed by law to administer the drug or to use or direct the use of the device, or shipped directly to or in the possession of a hospital, clinic, or public-health agency, for use in the course of the professional practice of such a licensed practitioner, shall be exempt from K.S.A. 65-669 (f) (1) if it meets the conditions of paragraphs (b) (2) and (3), or (c) (2) and (3), or (d) (2) and (3) of this section.

(f) *Retail exemption for veterinary drug and prescription devices*. A drug or device subject to paragraph (c) or (d) of this section shall be exempt at the time of delivery to the ultimate purchaser or user from K.S.A. 65-669 (f) (1) if it is delivered by a licensed practitioner in the course of his professional practice or upon a prescription or other order lawfully issued in the course of his professional practice, with labeling bearing the name and address of such licensed practitioner and the directions for use and cautionary statements, if any, contained in such order.

(g) *Exemption for new drugs*. A new drug shall be exempt from K.S.A. 65-669 (f) (1):

(1) To the extent to which such exemption is claimed in an effective application with respect to such drug under section 505 of the federal act; or

(2) If no application under section 505 of the federal act is effective with respect to such drug but it complies with section 505 (i) and regulations thereunder.

No exemption shall apply to any other drug which would be a new drug if its labeling bore representations for its intended uses.

(h) *Exemption for drugs or devices when directions are commonly known*. A drug or device shall be exempt from K.S.A. 65-669 (f) (1) insofar as adequate directions for common uses thereof are known to the ordinary individual.

(i) *Exemptions for inactive ingredients*. A harmless drug that is ordinarily used as an inactive ingredient, such as a coloring, emulsifier, excipient, flavoring, lubricant, preservative, or solvent, in the preparation of other drugs shall

be exempt from K.S.A. 65-669 (f) (1). This exemption shall not apply to any substance intended for a use which results in the preparation of a new drug, unless an effective new-drug application provides for such use.

(j) *Exemption for diagnostic reagents*. A drug intended solely for use in the professional diagnosis of disease and which is generally recognized by qualified experts as useful for that purpose shall be exempt from K.S.A. 65-669 (f) (1) if its label bears the statement "diagnostic reagent -- for professional use only."

(k) *Exemption for prescription chemicals and other prescription components*. A drug prepared, packaged, and primarily sold as a prescription chemical or other component for use by registered pharmacists in compounding prescriptions or for dispensing in dosage unit form upon prescriptions shall be exempt from K.S.A. 65-669 (f) (1) if all the following conditions are met:

(1) The drug is an official liquid acid or official liquid alkali, or is not a liquid solution, emulsion, suspension, tablet, capsule, or other dosage unit form; and

(2) The label of the drug bears:

(I) The statement "for prescription compounding;" and

(II) if in substantially all dosage forms in which it may be dispensed it is subject to K.S.A. 65-669 (q) (A), the statement :Caution: Federal law prohibits dispensing without prescription;" or

(III) if it is not subject to K.S.A. 65-669 (q) (A) and is by custom among retail pharmacists sold in or from the package for use by consumers, "adequate directions for use" in the conditions for which it is so sold. *Provided, however*, That the information referred to in subdivision (III) of this subparagraph may be contained in the labeling on or within the package from which it is to be dispensed.

(3) This exemption shall not apply to any substance intended for use in compounding which results in a new drug, unless an effective new-drug application covers such use of the drug in compounding prescriptions.

(l) *Exemption for processing, repacking, or manufacture*. A drug in a bulk package (except tablets, capsules, or other dosage unit forms) or a device intended for processing, repacking, or use in the manufacture of another drug or device shall be exempt from K.S.A. 65-669 (f) (1) if its label bears the statement "Caution: For manufacturing, processing, or repacking;" and, if in substantially all dosage forms in which it may be dispensed it is subject to section 15 (k) (1) of the act, the statement "Caution: Federal law prohibits dispensing without prescription." This exemption and the exemption under paragraph (k) of this section may be claimed for the same article. But the exemption shall not apply to a substance intended for a use in manufacture, processing, or repacking which causes the finished article to be a new drug, unless:

(1) An effective new-drug application held by the person preparing the dosage form or drug for dispensing covers the production and delivery to him of such substance; or

(2) If no application is effective with respect to such new drug, the label statement "Caution: For manufacturing, processing, or repacking" is immediately supplemented by the words "in the preparation of a new drug limited by federal law to investigational use," and the delivery is made for use only in the manufacture of such new drug limited to investigational use as provided in federal regulation 1.114.

(m) *Exemption for drugs and devices for use in teaching, research, and analysis*. A drug or device subject to paragraph (b), (c), or (d) of this section shall be exempt from K.S.A. 65-669 (f) (1) if shipped or sold to, or in the possession of, persons regularly and lawfully engaged in instruction in pharmacy, chemistry, or medicine not involving clinical use, or engaged in research not involving clinical use, or in chemical analysis, or physical testing, and is to be used only for such instruction, research, analysis, or testing.

(n) *Expiration of exemptions*. (1) If a shipment or delivery, or any part thereof, of a drug or device which is exempt under the regulations in this section is made to a person in whose possession the article is not exempt, or is made for any purpose other than those specified, such exemption shall expire, with respect to such shipment or delivery or part thereof, at the beginning of that shipment or delivery. The causing of an exemption to expire shall be considered an act which results in such drug or device being misbranded unless it is disposed of under circumstances in which it ceases to be a drug or device.

(2) The exemptions conferred by paragraphs (i), (j), (k), (l), and (m) of this section shall continue until the drugs or devices are used for the purposes for which they are exempted, or until they are relabeled to comply with K.S.A. 65-669(f) (1). If, however, the drug is converted, compounded, or manufactured into a dosage form limited to prescription dispensing, no exemption shall thereafter apply to the article unless the dosage form is labeled as required by K.S.A. 65-669(q) and paragraph (b), (c), or (d) of this section.

(o) *Intended uses*. The words "intended uses" or words of similar import in paragraphs (a), (g), (i), (j), and (l) of this section refer to the objective intent of the persons legally responsible for the labeling of drugs and devices. The intent is determined by such persons' expressions or may be shown by the circumstances surrounding the distribution of the article. This objective intent may, for example, be shown by labeling claims, advertising matter, or oral or written statements by such persons or their representatives. It may be shown by the circumstance that the article is, with the knowledge of such persons or their representatives, offered and used for a purpose for which it is neither labeled nor advertised. The intended uses of an article may change after it has been introduced into commerce by its manufacturer. If, for example, a packer, distributor, or seller intends an article for different uses than those intended by the person from whom he received the drug or device, such packer, distributor, or seller is required to supply adequate labeling in accordance with the new intended uses. But if a manufacturer knows, or has knowledge of facts that would give him notice, that a drug or device introduced into commerce by him is to be used for conditions, purposes, or uses other than the ones for which he offers it, he is required to provide adequate labeling for such a drug or device which accords with such other uses to which the article is to be put. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

Sanitation; Food and Drug Establishment
Article 23
General Provisions

K.A.R. 28-23-1. The cleanliness of the building in which food and drugs are prepared or distributed. Every building, room, basement, or cellar occupied or used as a confectionery, cannery, packing house, creamery, cheese factory, candy factory, ice cream factory, cake factory, restaurant, hotel kitchen, grocery, drugstore, meat market, bottling works, produce house or other place or apartment used for the preparation, manufacture, packing, storage, sale, or distribution of any food or drug shall be properly lighted, drained, plumbed and ventilated, and conducted with strict regard to the influence of such conditions upon the health of the operatives, employees, clerks, or other persons therein employed, and the purity and wholesomeness of the food therein produced. The term ``food'' as used herein shall include all articles used for food or drinks, confectionary or condiment, whether simple, mixed, or compound, and substances or ingredients used in the preparation thereof; and the term ``drug'' as used shall include all medicines and preparations for internal or external use recognized in the U.S. pharmacopoeia or national formulary, and any substance, or mixture of substances, intended to be used for the cure, mitigation, or prevention of disease of either man or animal. The term ``transportation'' as used shall apply only to intrastate traffic. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

K.A.R. 28-23-2. All vehicles used in the transportation of food products shall be clean at all times. The floors, walls, ceilings, furniture, receptacles, implements, and machinery of every establishment or place where food or drugs are prepared, manufactured, packed, stored, sold, or distributed; and all cars, trucks, and vehicles, used in the transportation of food products shall at no time be kept in an unclean, unhealthy or insanitary condition. Unclean, unhealthy and insanitary conditions shall be deemed to exist if refuse, dirt and waste products subject to decomposition and fermentation incident to the manufacture, preparation, packing, storing, selling, distribution and transporting of the article of food or drug are not removed daily; if all trucks, trays, boxes, baskets, buckets, and other receptacles, chutes, platforms, racks, tables, shelves, and all knives, saws, cleavers, and other apparatus, utensils, and machinery used in moving, handling, cutting, chopping, mixing, canning, and all other processes are not thoroughly cleaned daily or immediately after a twenty-four hour interval of disuse or interruption in use, and if the clothing of operatives, employees, clerks, or other persons therein employed is unclean. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

K.A.R. 28-23-3. All materials used in the production of food shall be protected from spoilage. All materials used in the production of food or drug products, and all food and drug products, shall be stored, handled and kept in a way to protect them from spoilage and contamination; and no material shall be used which is spoiled or contaminated, or which may render the finished product unwholesome or unfit for the use for which it is intended; and no water which is polluted shall be used for washing, cleaning or preparing any food product. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

K.A.R. 28-23-6. Toilet facilities. Every building, room, basement, enclosure, or premises occupied, used or maintained for the production, preparation, manufacture, canning, packing, storage, sale or distribution of food or drugs shall have adequate and convenient toilet rooms, lavatory or lavatories. The toilet room shall be separate and apart from the room or rooms where the process of production, preparation, manufacture, packing, storing, canning, selling and distribution of food is conducted. The floors of such toilet rooms shall be of nonabsorbent material, and shall be washed and scoured daily. Such toilet or toilets shall be furnished with separate venting flues and pipes, discharging into soil pipes, or shall be on the outside of and well removed from the building. Lavatories and washrooms shall be adjacent to toilet rooms, or when the toilet is outside of the building, the washroom shall be near the exit to the toilet. Lavatories and washrooms shall be supplied with soap, hot and cold water tempered by means of a mixing valve or combination faucet and clean towels, and shall be maintained in a sanitary condition. Operatives, employees, clerks, and all other persons who handle the material from which food or drugs are prepared, or the finished products, before beginning work and after visiting toilets, shall wash their hands and arms thoroughly with soap and clean water. Instructions to this effect shall be posted in a conspicuous place. (Authorized by K.S.A. 65-625, K.S.A. 1979 Supp. 65-626; effective Jan. 1, 1966; amended May 1, 1980.)

K.A.R. 28-23-7. The cleanliness of the personnel who assist in the preparation of food for distribution. No operative, employee, or other person shall expectorate on the floor or walls of any buildings, rooms, basement or cellar where the production, manufacture, packing, storing, preparation, or sale of any food or drugs is conducted. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966

K.A.R. 28-23-11 The condition of the building in which food is prepared or handled. No building, place, or room which is dilapidated or in such a state of repair or of such construction that it cannot be kept in a sanitary condition when used as a place for the preparation, manufacture, packing, storage, sale, or distribution of any food or drug product shall be used as a place for conducting any business handling, preparing or producing food or food products; and the owner or owners of such building, room or place shall not permit it to be used as a place for

conducting such a business; and each day of use of such building, room, or place shall constitute a separate offense. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

K.A.R. 28-23-12. The health of the personnel. No employer shall require, permit or suffer any person to work, nor shall any person work in a building, room, basement, cellar, or vehicle occupied or used for the production, preparation, manufacture, packing, storing, sale, distribution, and transportation of food or drugs, who is affected with any venereal disease, smallpox, diphtheria, scarlet fever, tuberculosis or consumption, trachoma, typhoid fever, epidemic dysentery, measles, mumps, German measles (Rothein), whooping cough, chicken pox or other contagious disease. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

K.A.R. 28-23-13. Those responsible for the condition of the building in which food is prepared. Every person or corporation in charge of, or in control of or in authority over any of the places mentioned by and described in these regulations shall be responsible for the condition thereof, and it shall be his or its duty to see that the provisions of these regulations with reference to the condition, arrangement and conduct of such places are carried out. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

K.A.R. 28-23-16 Handling of potentially hazardous foods; temperatures. (Authorized by K.S.A. 65-626; effective, E-68-9, March 11, 1968; effective Jan. 1, 1969; amended Jan. 1, 1970; revoked Feb. 29, 2008.)